IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA
CASE NO.: 97-03522-CA
DIVISION: CV-H

ANGELA B. WIDDICK, as Personal Representative of the Estate of ROLAND E. MADDOX, deceased,
Plaintiff,
vs.
BROWN & WILLIAMSON TOBACCO CORPORATION, a foreign corporation; LIGGETT GROUP, INC., a foreign corporation; and WINN-DIXIE STORES, INC., a Florida corporation,
Defendants.

PROCEEDINGS held before The Honorable Charles O. Mitchell, Jr., at the Duval County Courthouse, 330 East Bay Street, Jacksonville, Florida, on Friday, May 29, 1998.

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Friday, May 29, 1998 8:00 a.m.

P R O C E E D I N G S

MR. FORTE: This court is again in session. Be seated, please.
THE COURT: Okay. Good morning, Mr. Nyhan.
MR. NYHAN: Good morning, Your Honor.
THE COURT: Good morning, Mr. Wilner.
MR. WILNER: Good morning.
THE COURT: Are you ready to proceed?
MR. NYHAN: Yes, we are, Your Honor.
THE COURT: I've been handed a copy of a motion. You want to argue at this point or finish the doctor and then take a recess and argue it?
MR. NYHAN: Why don't we do that.
MR. WILNER: Okay.
THE COURT: Okay. Then you're ready to proceed?
MR. NYHAN: Yes, Your Honor, I am.
THE COURT: Bring them in, please.
(Jury enters courtroom)
THE COURT: Good morning, ladies and gentlemen.
THE JURY: Good morning.
THE COURT: This gentleman who just

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directed to you your seat, Mr. Forte, is filling in for Mr. Backer today. He's a bailiff just like Mr. Backer, and if you have any problems, you know, you can tell him just as you would Sid.
MR. FORTE: Thank you.
THE COURT: All right, Mr. Nyhan, you may proceed whenever you're ready.

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MR. NYHAN: Thank you, Your Honor.
CROSS-EXAMINATION (Continued)
BY MR. NYHAN:
Q Good morning, Doctor.
A Good morning.
Q You're aware that the American Tobacco Company has funded smoking and health research through the Council of Tobacco Research and other means; is that right?
A Yes, I am.
Q And Philip Morris, your former employer, has done the same thing?
A That's correct.
Q You agree that it's entirely proper to fund research through independent scientists; isn't that right?
A Not entirely.
Q Well, let me ask it this way, Doctor. Do

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you think that it is scientifically improper for a company to fund research through independent scientists?
A No, I don't. It's fine to do it. You just need to do your own also.
Q You're aware of the research that the American Tobacco Company supported at the Medical College of Virginia beginning in 1936?
A Not all the details, no.
Q You are aware that American Tobacco Company has supported research at the Medical College of Virginia since 1936?
A Yes, I am.
Q Have you read the annual reports that were produced as a result of that work?
A I read some of it. I don't recall how many or, you know, in detail.
Q And you're aware that the Council for Tobacco Research has published summaries of the work that it's done over the years?
A Yes, I am.
Q Now, you've attended many presentations by tobacco industry scientists; isn't that true?
A That's correct.
Q And those include the TCRC conferences,

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right?
A That's correct.
Q Would you explain to us what TCRC is.
A The acronym stands for the Tobacco Chemists Research Conference that, during the period that I was at Philip Morris, it was held annually. And the chemists from various tobacco companies from the USDA, from various universities would attend the conference and present the results of their

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research.
Q And, so, the Tobacco Chemists Research Conferences have been held annually -- do you know when they began?
A Around 1940, '39 or '40, I believe.
Q These are annual meetings of scientists employed in the industry and scientists doing research outside the industry but related to the industry have gathered together to discuss their findings; is that right?
A That's correct.
Q Papers are presented?
A That is correct.
Q Have you presented any papers at that organization?
A Not personally. People working for me

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presented papers.
Q Now, you're aware that scientists from the American Tobacco Company have made many presentations to that group?
A Yes, I am.
Q And you're aware that scientists from Brown & Williamson Tobacco Corporation have made many presentation to that group?
A That is correct.
Q Now, you mentioned that officials from the Federal Government also attended. These were open to the scientific community, correct, these meetings?
A Correct.
Q And anybody who had an interest was welcome to attend, correct?
A Up to the limits of the number of people that they could accommodate at the meeting, yes.
Q Certainly. Government officials presented results of their research at these meetings?
A USDA employees, yes.
Q State governmental scientists also attended; didn't they?
A Yes, they did.
Q And scientists of the American Health

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Foundation attended, right?
A That is correct.
Q Now, you've read a 700-page monograph on the Premier cigarette, right?
A Yes. Don't ask me on all 700 pages, but I do recall reading that.
Q What is a monograph?
A A monograph is a book, essentially, that's written dedicated to a single topic. That's why they call it monograph.
Q You have -- the monograph that was prepared related to the Premier was entitled Chemical and Biological Studies, New Cigarette Prototypes that Heat Instead of Burn Tobacco,

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correct?
A I believe so, yes.
Q And you've read portions of this, have you?
A I think I've seen portions of it, yes. I don't recall exactly which ones.
Q Now, this monograph identifies a number of patented developments that R. J. Reynolds Tobacco Company developed, correct?
A Yes, they mention patents, I believe.
Q Not all patents -- well, let me withdraw

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that and start over again. Not all patented inventions are commercially feasible, are they?
A That's correct.
Q And there's a distinction between something that may be technically feasible and something that is commercially feasible; isn't that right?
A That is correct.
Q I want to move to another subject now, Doctor. And that is the widespread awareness of health hazards of smoking. Now, you've heard about the health hazards of smoking since you were a young boy; isn't that right?
MR. WILNER: Excuse me, Your Honor. That's not a subject we discussed with Dr. Farone at all. I didn't qualify him --
THE COURT: I think you'd have to do some groundwork on that one, Mr. Nyhan.
Q Doctor, one of the things that you believe --
THE COURT: I'll let him answer the question about whether he's heard about health hazards, but if you're going into what they are and so forth --
MR. NYHAN: Really I just want to address

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that issue.
THE COURT: All right, I'll allow it.
Q You heard various epithets used for cigarettes; isn't that right, Doctor?
A That's correct.
Q Coffin nails?
A Yes.
Q Cancer sticks?
A Yes.
Q Cigarettes cut your wind? The cigarettes cut your wind?

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A I'm not quite sure about that one.
Q All right. You've personally received smoking and health education in your junior and high school classes; didn't you?
A I don't recall. We had general health education, yes, so it would be covered.
Q Now, you're aware that Florida has education on smoking and health issues; it's been required since the turn of the century?
A I'm not sure I recall that.
Q You agree that there's been massive publicity about smoking and health issues over the last 40 years; isn't that right?
A Yes.

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Q And that massive publicity occurred even before that time, 40 years ago; isn't that right?
A Well, I don't think I can recall beyond that time.
Q All right. Fair enough. But you've heard about that?
A Yes.
Q Now, every major smoking and health development that's occurred in this country has been reported widely in the press; isn't that right?
MR. WILNER: Excuse me, there's no showing he's an expert in what --
THE COURT: I'll sustain the objection.
Q Well, you've testified about the massive publicity that attended the release of the 1964 Surgeon General's report? You agree that was the largest news story on health issues in 1964?
MR. WILNER: Same objection. He's not an expert in what the news did or didn't do.
THE COURT: I'll sustain the objection.
Q Doctor, you worked for a tobacco company for many years, correct?
A Correct.
Q And as part of your work, you kept abreast of what was going on in the world around you; didn't

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you.
MR. WILNER: Excuse me, that's vague. What do you mean the "world around"?
THE COURT: Well, okay. I'll sustain the objection to the form of the question.
MR. NYHAN: Okay.
Q During the time you worked for Philip Morris, there's no question that there was absolutely massive publicity that attended the

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release of every Surgeon General's report; isn't that true?
MR. WILNER: Same objection.
THE COURT: I'll let him answer that question.
A Well, I'm not sure what we mean by "massive publicity," but certainly with every release they made an issue of it, yes. I mean, when you work for a cigarette company, you're obviously more interested in it than if you don't work for a cigarette company, so...
MR. NYHAN: Doctor -- Your Honor, I move to strike that.
THE COURT: Okay. I will strike it, Mr. Nyhan.
Q I'd like to read from your deposition

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taken on March 12, 1998, in this case at page 539:
Question: And what you know is that there has been absolutely massive publicity that has attended the release of essentially every Surgeon General's report, correct?
Answer: Correct. And what you know is --
Question: And what you know is there is massive publicity that attends the publication of the 1964 Surgeon General's report, correct?
Answer: Correct.
Question: It was the largest news story certainly on health issues in 1964; wasn't it?
MR. WILNER: Excuse me. Your Honor, this isn't impeaching what he asked him.
THE COURT: I'll sustain the objection to the last question.
Q Now, Doctor, in 1989 the Surgeon General stated that general risks of smoking are well-known, correct?
A Yes.
Q And you agree that that's true; don't you?
A That general risks are known, yes.
Q And you've written that the negative health consequences of smoking, particularly emphysema and increased lung cancers among smokers,

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are well-known, correct?
A Yes, I've written that.
Q And that's true; isn't it?
A Yes.
Q And that's been true for 30 or 40 years; hasn't it?

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A Have I known it for 30 or 40 years or generally?
Q That it's been generally known.
MR. WILNER: And we object. He's not an expert in public opinion.
THE COURT: All right, would you approach the side bar.
(Side-bar conference held outside the hearing of the jury)
THE COURT: Okay, the reason I'm having a problem is simply that I think you objected when Mr. Wilner wanted to go into his opinions about the health aspects, because he was a design expert, not a health person. And if you're asking him health questions, I would sustain the objection to it.
Now, I've allowed the ones so far because I think we're talking about information that may or may not be generally known or that any employee of a cigarette company may be aware of some of these

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things; but, I mean, I think that one goes into the health area about -- and, basically, and I'm trying to remember back to yesterday, I think you objected to that, to him giving his opinion on health matters when Mr. Wilner had him on direct.
MR. NYHAN: Well, he did offer opinions as to why cigarettes ought to be designed the way they are. And I think this also goes to credibility. We're entitled to bring this out.
THE COURT: Well, I guess what I'm saying is his personal opinion on health matters I don't see any relevance.
MR. NYHAN: I agree. And I'm talking about awareness.
THE COURT: Right. And I've allowed you to ask him over the objection of what he was aware of, and he's told us; but now if you're going to ask him what the public was aware of and --
MR. NYHAN: All right.
THE COURT: I don't think he necessarily knows that.
(Side-bar conference concluded; proceedings resumed before the jury)
Q Doctor, you're aware that back in 1953, 1954, the Surgeon General of the United States

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publicly stated that he did not believe that cigarette smoking caused lung cancer; isn't that true?
A That's true.
Q And in 1953 and 1954, you're aware that senior researchers of the Cancer Institute expressed their belief that cigarette smoking did not cause lung cancer, correct?
MR. WILNER: Your Honor, he wasn't tendered as to his history of knowledge.
THE COURT: I'll overrule the objection.
Q Do you want me to repeat the question?
A No. Yes, I'm aware of that.
Q There were many other prominent scientists within the government and outside the government whom you're aware of who expressed their belief that cigarette smoking did not cause lung cancer, correct?
A Yes.
Q And that remained true for at least ten years until the release of the 1969 Surgeon General's report; aren't you aware of that?
A Yes, that's the cause of the confusion among the public as to whether it did or it didn't, yes.

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Q It's your belief that a consensus about whether cigarette smoking caused lung cancer did not develop until the release of the Surgeon General's report in 1964; isn't that your view?
A Yes, and also that the earlier denials kind of confused the public with regard to whether it caused cancer or not, because for so many years you hear it didn't and then later on you hear that it does.
Q And those denials came from people who had no association with the tobacco companies; isn't that true? These people we've already mentioned? The Surgeon General.
MR. WILNER: Excuse me, Your Honor --
A I'm not sure.
MR. WILNER: I can't understand the question and he interrupted him in the middle of his sentence.
THE COURT: Let him answer.
Q Pardon me, Doctor. I don't mean to interrupt.
A I'm not sure that they didn't have any connection because we were talking about conferences and things that they went to together and programs that they met with, so there was some connection.

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Q Let me ask you, was the Surgeon General in 1953 and 1954 when he publicly stated that he did not believe that cigarette smoking caused lung cancer, do you think the Surgeon General was influenced by the tobacco companies in '53 and '54?

A As I understand -- we had this discussion, I think, during the deposition, but it was my understanding that the Surgeon General doesn't write the report, that it comes from a group of people who provide him the information and they do it. And I'm sure that some of those people met with people from the industry to get their opinions, just like the '64 Surgeon General's report. So, yes, there was information passed from the industry, my opinion, to the Surgeon General.

Q Now, you're speaking about the first Surgeon General's report in 1964, right?

A Well, yes, but I would presume that any prior Surgeon General --

Q I'm not asking you to speculate now.

MR. WILNER: Excuse me, Your Honor. He interrupts him every question -- or answer.

MR. NYHAN: Objection, speculation.

THE COURT: But you asked him his opinion, Mr. Nyhan.

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MR. NYHAN: All right. Let me start over again.

MR. WILNER: Your Honor, if he's got a question pending --

THE COURT: Wait a minute. Wait a minute. I'm not going to get into argument in front of the jury by either of you, okay?

MR. WILNER: Sure.

THE COURT: All right. Let him finish answering the question.

Q Please finish whatever answer that was pending,?

A I just was trying to understand, I mean, if in one case -- as I understand it, the way the Surgeon General works is they try to obtain information from all parties. So, therefore, they would have tried to consult with the industry as well as with private officials to get opinions before anything was written.

Q All right. Now, the first report on smoking and health written by the Surgeon General or his committee was in 1964, correct?

A Correct.

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Q And you're aware that the tobacco industry supplied information to the Surgeon General in 4216 connection with that report?
A That is correct.
Q Have you ever read the three-volume Larson, Haag, Silvette monograph?
A Not in total, but I'm aware of it.
Q Now, I had asked you earlier about the Surgeon General in 1953 and 1954, and I believe you stated that the Surgeon General publicly stated in 1953 and 1954 that he did not believe that cigarette smoking caused lung cancer?
A That's my understanding.
Q Now, you're not suggesting that the tobacco companies had influenced the Surgeon General in 1953 and 1954, are you?
MR. WILNER: Asked and answered.
A I am.
Q You'll recall that there were other prominent scientists from within the government and outside the government, you're aware of, who expressed their beliefs that cigarette smoking did not cause lung cancer?
MR. WILNER: Repetitive, object.
THE COURT: I think he answered that question.
MR. NYHAN: Okay, I apologize.

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THE COURT: That he was aware that....
MR. NYHAN: All right.
Q Now, you're also aware that in 1958 -- excuse me, in 1957, the United States Surgeon General Burney said that the scientific evidence wasn't sufficient to warrant the imposition of a warning with respect to cigarettes; isn't that true?
A I'm aware of that.
Q And in 1958, the director of the National Cancer Institute went to the International Cancer Congress and said that the scientific evidence was insufficient to warrant a warning; isn't that true?
A That's correct.
Q By 1964, you're aware that the American Medical Association said that a warning was unnecessary because of the massive publicity which had been given to the risk of smoking over the course of the past ten years, true?
A Very confusing, yes.
Q That was the statement by the American Medical Association in 1964, correct?
A Very confusing statement but, yes, that is

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correctly the statement.
Q And also you're aware that the American Medical Association stated that a warning would not

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-- this is in 1964 -- that a warning would not alert even the very young cigarette smoker of anything of which he or she was unaware, correct?
A Yes, but, again, it's a very confusing statement.
Q Is it correct?
A It's correct that they made the statement, yes.
Q Now, during the time that -- so you agree that tobacco companies have committed enormous resources to cigarette design and to smoking and health research generally; isn't that true?
A Yes.
Q These are enormous financial resources?
A Yes.
Q And enormous amount of scientific talent, true?
A Yes.
Q That was true of the American Tobacco Company?
A To a lesser extent, but, yes.
Q Brown & Williamson Tobacco Company?
A Yes.
Q Philip Morris?
A Yes.

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Q R.J. Reynolds?
A Yes.
Q Lorillard?
A Yes.
Q British American Tobacco Company?
A Yes. And Liggett & Myers.
Q Now, it's your opinion that the tobacco companies have gone to great lengths to conduct hundreds of millions of dollars of research on the relationship between smoking and health and the effects of nicotine; isn't that right?
A They have spent the money, that is correct.
Q And that research began in earnest in the 1950s?
A Yes, or maybe even a little before.
Q And intensified in the '60s and '70s?
A Correct.
Q And continued into the '80s and '90s, correct?
A That is correct.
Q And evidence of that is the work that Reynolds did with Premier and Eclipse and Philip Morris did with Next?
A That is correct.

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Q Industry scientists have long been working on ways to reduce the risk of smoking; isn't that true?
A Yes.
Q Your mission when you were working at Philip Morris was to make safer cigarettes; wasn't that correct?
A That is correct.
Q Those were worthwhile objectives?
A I believe so.
Q And the work you and your colleagues did at Philip Morris was worthwhile, wasn't it?
A Yes, it was.
Q And you're proud of the work you did and your colleagues did, true?
A I am.
Q You spent 80 percent of your time developing superior products; isn't that right?
A Trying to, yes, that's correct.
Q And those who worked for you devoted even more of their time than you did to this effort?
A That is correct.
Q And there were other Philip Morris organizations that devoted a lot of their time to the same effort; isn't that true?

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A That's true.
Q And nothing in the work you did is anything you're ashamed of; is that correct?
A That is correct.
Q You thought your work was in the best interests of your customers?
A Yes.
Q And you and your colleagues at Philip Morris generally believe that you were serving the public health in doing that; isn't that true?
A Trying to reduce the hazards of smoking, true.
Q That was true of the other people working in other companies doing the same thing, true?
A I believe so.
Q Industry scientists were proud to be working on the development of low tar products; isn't that right?
A That is correct.
Q Based on your review of patents and internal documents, the industry is not only working on what you consider to be safer cigarettes, but it is also doing it to a very high level of perfection; isn't that true?
A Well, by "high level of perfection," I

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think we mean that they are putting forth maximum

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scientific effort or the abilities of the people --
by "perfection" in that sense?
Q Yes.
A Yes.
Q One of the goals of Philip Morris's research and development department was come up with
ways to reduce both tar and nicotine, correct?
A Well, in some cases. In some cases, to increase the ratio of nicotine to tar.
Q And, in fact, you did that; didn't you?
A Yes, we did.
Q Now, we covered yesterday a good bit of the work that was done on Tareyton with charcoal filters and other companies' efforts to reduce tar through the Carlton product. I'm not going to go back over that.
I'd like to talk a bit now, Doctor, about
the safer cigarette that you've worked on. One of your interests was in reducing nitrosamines; is that
right?
A That is correct.
Q Now, no federal governmental agency has ever said that a cigarette with reduced nitrosamines
is safer, isn't that true?

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A That's correct, yes.
Q And no state governmental agency has said
that a cigarette with reduced nitrosamines is safer;
isn't that true?
A That is correct.
Q Is it also true that no voluntary health organization has ever said that reduced -- a
cigarette with reduced nitrosamines is safer?
A That's the status of the America Health Foundation. It's not a voluntary health organization, so...
Q Well, you tell us?
A I don't know. American Health Foundation
has, in fact, indicated that reduced nitrosamine would be a safer cigarette.
Q Has the American Cancer Society endorsed that view?
A Not that I'm aware.
Q The American Heart Association?
A No.
Q The American Lung Association?
A No.
Q Now, no federal governmental agency has ever said that a cigarette with reduced aldehyde is
safer; isn't that true?

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A I think that, but we're leaving out the USDA. I guess the programs they had on safer tobaccos and cigarettes. Is that a part of your

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--
Q I don't -- let me rephrase the question then. None of the federal government agencies that deal with smoking and health issues.
A Well, the United States Department of Agriculture deals with -- they're in the tobacco studies program.
Q All right. Has any federal government agency located within the public health service, department of health and human services, ever endorsed the concepts of reduced aldehyde?
A Not that I'm aware of.
Q And no state government has taken a position that a cigarette with reduced aldehyde is safer; isn't that true?
A To my knowledge.
Q And is that also true for the voluntary health organizations?
A I believe that's correct, yes.
Q Let's talk about PAHs, polyaromatic hydrocarbons. Again, none of the government agencies within health, human services or Surgeon General or public health service has ever taken the

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position that a cigarette with reduced PAH is safer; isn't that correct?
A Just for clarification on my part, National Cancer Institute tobacco working group that doesn't fit into.
Q Well, let's talk about that. Now, tell us -- what is it that the tobacco working group, which is part of the National Cancer Institute, or it was affiliated with the National Cancer Institute, what was the position they took back in 1978 and 1988?
A Well, they did various studies, the ones we talked about yesterday as having been closed down. And some of the results were published. And, for example, I recall that the use of cocoa was considered to be increasing tumorigenicity. So one could argue that they recommended that you don't use cocoa in your product because it increases the tumorigenicity.
Q That was further investigated and found not to be, in fact, a hazard?
A I'm not sure. To my way of thinking it still is a hazard.
Q Nobody has prohibited the use of cocoa, have they?
A Oh, that's true.

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Q So the government -- in fact, the government gets a list of the additives used in cigarettes, and the government has never said you can't use anything that is in there; isn't that right?
A That is correct. The government has not taken the position.
Q Are you aware of the work that Dr. G. O. Gori and others in the tobacco working group did with the National Cancer Institute in an effort to promote new technology that would reduce hazards in cigarette smoking?
A I think we discussed that yesterday, but, yes, I am.
Q And those efforts to produce a safer cigarette were ultimately shut down by Secretary Califano, correct?
A That is correct.
Q No state governmental agency has ever said that a cigarette with reduced PAH is safer; isn't that true?
A To my knowledge.
Q And the same is true for the voluntary health organizations?
A That is correct.

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Q Now, again, no federal or governmental agency has said if you reduce a nicotine analog you have a safer cigarette; isn't that true?
A I don't think they even have knowledge of it. Yes, I think that's true.
Q Now, no state or federal governmental agency has ever said that if you meet one or more of the criteria that you have outlined for a safer cigarette you would, in fact, have a safer cigarette; isn't that true?
A One of the interesting ironies is there are no standards for cigarettes. Companies are free to sell as toxic a product as they want to or as safe a product as they want to.
Q Doctor, that really didn't answer my question. My question was, no state or federal governmental agency has said that if you meet one or more of the criteria that you've established you would have a safer cigarette; isn't that true?
A They have not listed criteria for cigarettes, that is true.
(Change of reporter, 8:30 a.m.)

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Q You agree that it is not unusual to find

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encouraging results in one bioassay test and yet results which point in exactly the opposite direction in another bioassay test?

A That's the reason or importance for using a battery of tests. You have to use a bunch of them.

Q That's one -- have you finished your answer?

A Yes.

Q That is one of the reasons it is hard to figure out which way to go, though, isn't that true?

A No, that makes --

Q For example, you make --

MR. WILNER: Excuse me, Your Honor. He didn't finish.

A No, it's not the reason why. It makes it easier actually. But you find --

Q Well, let me ask --

MR. WILNER: Could we --

MR. NYHAN: Pardon me.

MR. WILNER: -- get an answer, please.

THE COURT: Okay, all right.

A If you find in a series of five tests, for example, that three go one way and two go the other

way, what you look for are a series of answers where all five tests show you that it is reduced. So the fact that you have a dichotomy of tests isn't to be considered confusing. That is considered to be a good thing, because then you look for ways for winning in all five tests.

Q You're aware that as we sit here today there is no consensus in the scientific community as to which bioassay test is the best; isn't that right?

A And there never will be.

Q You're not in a position to say which bioassay test is more relevant when those bioassay tests point in opposite directions; isn't that true?

A Well, I think the scientific community in general is in such a position because -- I mean, I'm not, but I think the scientific community is.

Q But on what --

MR. WILNER: Excuse me, Your Honor. He is answering.

THE COURT: All right, go ahead.

A Due to tying it in with epidemiology, if you make the relationship between those tests and the epidemiology, then in fact you could come to that conclusion.

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Q Now, Doctor, you're not really interested in the results of any one bioassay test; isn't that true?
A No. I like to see a battery of tests.
Q Now Philip Morris used a battery of bioassay tests, didn't they?
A Never on a finished product.
Q Well, Philip Morris did use different bioassay tests; isn't that true?
A That is correct.
Q That battery of bioassay tests was never endorsed by the National Cancer Institute, was it?
A I'm not sure because it's similar to the one that was used by the National Cancer Institute and the Tobacco Working Group. And, in fact, they -- I think that -- I've recently seen the report where they say that they did.
Q Nobody has ever said that if you produce these results in your tests you could call your cigarette, the one you propose, the safer cigarette; isn't that true?
MR. WILNER: Excuse me, Your Honor. We would object to the form as to what nobody ever said.
THE COURT: All right. I'll sustain the

objection to the form of the question, Mr. Nyhan.
MR. NYHAN: Thank you, You Honor.
Q Has the National Cancer Institute, the FDA, the FTC, or any other federal or state agency or voluntary health organization ever endorsed the test you propose and said that they would result in a safer cigarette?
A What test do I propose? I'm not sure I understand the question.
Q This battery of tests that you propose.
A Well, I think I stated, if you look in the Tobacco Working Group documents the National Cancer Institute supported, they have a battery of tests that they proposed, so I think that test -- I'm not saying anything that they didn't say. Yes, there is a battery of tests that you can use.
Q Now, that was -- those tests proposed by the Tobacco Working Group have not been endorsed by the federal government, have they?
A Well, they were -- is this National Cancer Institute related to the federal government?
Q Well, yes, it certainly is. But the tests were proposed by the Tobacco Working Group which has been shut down, and the tests have never been

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25 required; is that correct?

A Never been required, but they were used by the National Cancer Institute in those studies.
Q Your own view as to which bioassay tests are more relevant to the human system changes with time; isn't that true?
A Every scientist's view, yes, that's true.
Q Now, the safe cigarette that you have described for us is based on the same principle as the Premier cigarette developed by Reynolds; isn't that right?
MR. WILNER: Excuse me, Your Honor, which one, which safe cigarette?
Q Well, you had one which was proposed as safest, correct?
A The initial conceptual design, yes.
Q Right. And then you had another one that is proposed as safer?
A Well, there is a wide variety of things that can be safer.
Q But with respect to what you told us here and yesterday --
A Right.
Q -- you're speaking that the safer cigarette that you have described is based on the same principle as Reynolds Premier?

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A The safer, yes, it is.
Q Okay. And your hypothetical safer cigarette would look more like a Premier or an Eclipse than a Marlboro, wouldn't it?
A Well, not -- the safer cigarette is going to look pretty much like the one I have here in my hand. It's not necessarily any different in its looks or its action, so I'm not...
Q Well, you developed a conceptual prototype of a cigarette; is that right?
A That's the safest cigarette.
Q Well, let's talk about that then, the safest cigarette. That's, in effect, a straw inside a plastic test tube.
A No. That was a model that I used during the deposition to explain the concept of what it could look like. It is not a straw inside a plastic test tube.
Q Well, would you describe it then.
A What I am indicating is that if you take out only ingredients that we have tested separately or in concert in a battery of biological tests,

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like
we do for foods, drugs, cosmetics, and we prove that
they are safe, then a way to deliver them to a
consumer is to put them in a rod-like product that

looks like a cigarette, except you don't have to
light it to make it work. You simply suck on it,
and it puts nicotine, if we all agree that nicotine
is to be allowed, it puts nicotine and some
flavorance into the lungs so that you can deliver it
to the body without the addition of carcinogens.
It's a very simple concept.
Q Now, that has never been tested; is that
right?
A To my knowledge, no cigarette that is sold
on the market, as marketed, has ever been tested.
Q Now, the cigarette that you -- the safest
cigarette that you have developed has never been
tested?
A That is correct.
Q And it has never been marketed?
A That is correct.
Q And it is similar to the Free cigarette?
A Similar to, yes.
Q And the Free was banned by the FDA; is
that right?
A Well, it's because they did not apply to
the FDA as a drug. The cigarette that I'm
describing, my safest cigarette, one would have to
apply to the FDA with an investigational new drug

application because nicotine is a drug. You would
have to apply and get permission to do the testing.
They would have to agree that the results were
valid, and then you would be allowed to sell it.
Q Now, let me ask you about your safer
alternative device, that has never been
commercialized either, has it?
A Well, that's the direction in which we
just got through talking, that the industry -- so if
you want to argue the current one isn't safer,
then --
Q Doctor, I don't mean to argue, and I
simply want to ask you questions. Your concept for
a safer alternative cigarette has never been
commercially marketed, has it?
A I'm not sure.
Q You have made no measure of the commercial
acceptability of the safest cigarette you have
described either, have you?
A No. You have to have an investigational
new drug application with the Food and Drug

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Administration before you can test it in humans.
Q All right. And you have no idea what the level of consumer acceptance would be; isn't that right?

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A That is correct.
Q You believe that you could get 10 to 20 percent of the market if it were manufactured and purchased by consumers?
A I believe that if you can make a claim that would say to people that this product gives you your nicotine hit without causing cancer, that you would get 20 percent of the market.
Q Is it your opinion that the straw inside of a test tube would not take over any market share?
MR. WILNER: Excuse me, Your Honor, I object to the form.
THE COURT: I'll sustain the objection.
MR. NYHAN: Let me rephrase it, Your Honor.
Q You have described this safest cigarette of yours as the straw inside of a test tube; isn't that right, Doctor?
A No, that is not correct. I think we went through this before. That was a way of trying to get attorneys to understand the concept that I was talking about, just like the picture I drew as a conceptual. Obviously, I can't make it until I apply to the Food and Drug Administration for a investigational new drug application, so I can't

4237

test it until I do that.
Q So it hasn't been tested, and it hasn't been marketed, right?
A It hasn't been tested as all products on the market currently have not been tested.
Q Would you agree that if this product, this hypothetical cigarette that you have described, that would not have reduced the risk of lung cancer any more than if a smoker had stopped smoking?
A Well, I agree to that.
Q And all you have with respect to this product is hypothetical, you're thinking that this hypothetical cigarette would be acceptable to smokers in the marketplace; isn't that true?
MR. WILNER: Object to form.
THE COURT: I'll allow it, Mr. Wilner.
MR. NYHAN: Well, I can rephrase it, Your Honor.
Q Your hypothetical safe cigarette, you don't have any evidence that smokers in the

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marketplace would in fact accept it; isn't that true?
A That's -- I think that's incorrect. If you could make a claim --
Q Well, may I respond --

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MR. NYHAN: I'd like to read from his deposition, Your Honor.
THE COURT: Well, let him finish his answer and then you can --
Q Okay. Go right ahead.
A I think that if you could make a claim that it didn't cause cancer, you could probably sell a lot of it.
Q Let me read from your deposition taken on August 27 last year, page 343.
Question: Your hypothetical safe cigarette, what evidence do you have that smokers in the marketplace would in fact accept it?
Answer: It's a hypothetical case, so it's hypothetical evidence.
Was that the question you were asked and the answer you gave in that deposition, Doctor?
A I just explained my hypothetical answer.
Q Doctor, my question was, were you asked that question and did you give that answer?
A Yes.
Q Now, Doctor, it's your opinion that a safer, conventional cigarette would be one that delivered 0.6 milligrams of tar and 0.2 milligrams of nicotine, according to the FTC test; is that

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right?
A I think I described that as being the limits that I would like to see on a safer cigarette, not to go any higher than that.
Q All right. Let's talk for a moment about how these numbers are measured on the FTC method. You're familiar with how that method was developed; is that right?
A Yes, I am.
Q In fact, your wife, when she was working at the American Tobacco Company, helped to develop the Cambridge filter pad; isn't that true?
A That's correct.
Q And the Cambridge filter pad is the device that is used to collect and measure the amount of tar that is produced on smoking machines that the FTC requires the companies to use; is that right?
A That's correct.
Q And these numbers of tar and nicotine are reported to the FTC, and yesterday I think you

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described or Mr. Wilner read a chart of Lucky Strikes on filters that had milligrams of tar and nicotine and they listed those for us.

A That's correct.

Q That's the method of measuring tar and

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nicotine required by the federal government, correct?

A That is the required method, yes.

Q And the companies have been doing that ever since that method was required, reporting that information to the FTC who publicized it, correct?

A That is correct.

Q Now, with respect to the safer, conventional cigarette that you advocate, you want to see levels of tar and nicotine that are lower or that these levels are lower; is that right?

A Yes. But we're not talking about FTC methodology.

Q You want to see that -- well, the companies can't sell anything without publishing -- tobacco companies can't sell a cigarette without notifying the FTC of what the tar and nicotine levels are, correct?

A That's correct.

Q And the numbers that you're recommending to use as recommended levels for the safer cigarette are at these levels or below, right?

A Right. So you would publish whatever number came out within the FTC testing after you tested it using the smoking simulators that the

4241

companies have that smoke cigarettes, you know, the normal way. But, yes, that is the upper limit for the FTC tests, but you could have -- actually deliver less to the smoker.

Q All right. You'd like to see an even lower delivery by the FTC method for commercial products; is that right?

A Yes.

Q And you think that you would prefer to see a product that delivered 0.6 milligrams of tar and 0.2 milligrams of nicotine, correct?

A Correct.

Q Now, to go about producing a cigarette that delivered 0.6 milligrams of tar and 0.2 milligrams of nicotine, it's your opinion that you have to add nicotine to the tobacco blend, wouldn't you?

A No, that is not my opinion that you have to add nicotine. You could use -- you could add nicotine in many ways but through the blend. So I mean, you don't necessarily have to use exogenous

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nicotine, you know, nicotine that you buy and put in there.

Q Doctor, I'd like to read from your deposition on April 7, 1998, page 88.

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Question: How would you go about producing a cigarette that had a tar to nicotine ratio of 0.6 to 0.2 or that delivered 0.6 tar to 0.2 nicotine?

Answer: You have to add nicotine to the blend to the expanded tobacco blend that we were talking about earlier.

Were you asked that question, and did you give that response?

A Yes, but you don't understand the answer. You're adding nicotine, but the nicotine comes from tobacco, as I pointed out yesterday when I drew the little chart, that you have previously extracted. So it is not, you're not going to the store or chemical store and buying nicotine. The nicotine that you are using is all coming from the tobacco. You are taking it from Burley, for example, and adding it to Bright. It has been expanded, so it is not purchased nicotine.

Q Is that something that you would call nicotine spiking?

MR. WILNER: Excuse me, is what?

Q Is the process you have just described, is that nicotine spiking or not?

A I wouldn't call it nicotine spiking. I

4243

mean, it is the addition of nicotine. And if you want to say that you are spiking the cigarette with nicotine, I don't object to that terminology, but that's not my terminology.

Q That's not what you have in mind, though; is that right?

A If you want to call adding nicotine spiking, then you could say, yes, that's what I have in mind, but I'm not -- that's not my terminology. I think addition is correct. It describes what I am doing.

Q Now, you wouldn't add that nicotine for the purpose of trying to hook consumers, would you?

A No. You add the nicotine so that the consumers that are already hooked, can maintain their dependence without the withdrawal stress, the

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withdrawal syndrome and the other problems.
Q Doctor, you agree that Carlton made by --
was made by American and is now made by Brown & Williamson was getting close to your safer, conventional cigarette concept, correct?
A It has never been tested to my knowledge in terms of the biological tests, so yes, it is getting closer, but that is a hypothesis based on strictly the tar and nicotine numbers.

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Q Let me read again from your deposition of April 7, page 85.
Question: For a company that wanted to produce a conventional product in the United States, what do you think is an appropriate -- assuming they offer a range of products that have differing tar and nicotine deliveries, what do you think is an appropriate range to put out from the standpoint of low end up to a high end?
Answer: Well, I mean, we're getting close with Carlton. I mean, if you're down below a milligram of tar, especially if you can get down to six-tenths or half a milligram, the risk becomes less and less. I mean, it's not good enough, but certainly we should see a decrease epidemiologically in problems caused by smoking, and that would seem to be, you know, a better level of acceptance -- acceptable risk than what we have now. So to me, it's appropriate to try to get it down into that range.
Did you give that answer to that question on April 7, Doctor?
A Yes. And if you look at all the qualifications in there, I think you'll understand what I was talking about.

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Q All right. Now, let me show you what we can mark for identification as the exhibit next in order.
THE COURT: What is it, Mr. Langley?
MR. NYHAN: Your Honor, it's a package of Carlton.
THE COURT: No, what is the letter?
MR. NYHAN: Exhibit W.
THE COURT: All right.
MR. NYHAN: Thank you.
(Defendant's Exhibit W was marked for identification).
MR. NYHAN: We're going to get everything fired up here. It will take a minute to warm up. We'll continue the questioning while that warms

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up.
May I approach?
THE COURT: All right.
Q This Carlton has been on the market for years, right, Doctor?
A That's correct.
Q And you see on Exhibit W on the side opposite the exhibit identification tag a listing of tar and nicotine numbers?
A Yes, I do.
Q What is that?

4246

A Tar, one milligram and nicotine one-tenth milligram.
Q Printed right on the package, correct?
A Interestingly it's one of the few products that has the tar and nicotine numbers printed on the package.
MR. NYHAN: We're not getting the power through the projector here.
THE CLERK: Did you turn on the back, the red?
MR. NYHAN: Stephanie to the rescue here. Thank you.
(The exhibit is projected on the screen)
Q I'm going to note that this is Dr. F's standard, and then here, this is Carlton, the Carlton red pack. And you read that as one milligram of tar?
A Correct.
Q And 0.1 milligram of nicotine; is that right?
A That's correct.
MR. NYHAN: You've got to hold the cellophane on top. There we go.
Q So this is advertised right on the package then, correct?

4247

A It's very unusual, yes.
Q Now, are you aware that -- well, that's been on the market for 14 years, right?
A I'm not sure of the exact time.
Q Now, you're aware of another product made by American Tobacco formerly and now by Brown & Williamson called Carlton Ultra?
A Yes.
Q And you're familiar with the tar and nicotine levels of Carlton Ultra?
A I am sure I am, but I don't recall exactly.
Q Well, let's mark as exhibit X for x-ray.
(Defendant's Exhibit X was marked for identification)
Q We'll call it Carlton blue.

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(Counsel furnishes the exhibit to the witness)
Q The Carlton blue now that has been marked as Exhibit X, that also has tar and nicotine levels printed on it, correct?
A Correct.
Q And what is the level of tar for Carlton blue?
A It says less than 0.01 milligrams and

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nicotine less than 0.002 milligrams.
Q Now, let me write that down here. Now, in terms of tar and nicotine deliveries -- Carlton blue is Carlton ultra, right? The Carlton Ultra product, the blue package, beats your criteria for tar and nicotine levels, doesn't it?
A Only for tar and nicotine levels.
Q It is 60 times lower in tar than your safer cigarette proposal, true?
A Numerically that's correct.
Q And it's a hundred times lower in nicotine than your safer cigarette proposal, isn't it?
A That's correct.
Q And Carlton Ultra does not have any added nicotine, does it?
A I guess. I don't know. If you want to tell me how it is made and get into the details. I'm not sure it doesn't have any added nicotine.
Q Well, I would -- you're not aware that it has any added nicotine, are you?
A I'm not aware one way or the other.
MR. NYHAN: I don't have any other questions for you, Doctor. Thank you.
THE COURT: Mr. Wilner?
MR. WILNER: Could we take a stretch just for a minute?

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THE COURT: All right. Well, I'll ask the jury to step back in the jury room for five minutes.
(Jury exits courtroom; discussion off record and recess)
(Change of reporter, 8:55 a.m.)

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THE COURT: Just have a seat. Are you ready, Mr. Nyhan?
MR. NYHAN: Yes, Your Honor.
THE COURT: Mr. Wilner, are you ready?
MR. WILNER: Yes, Your Honor, we are.
THE COURT: All right. Bring them in.
THE BAILIFF: Please enter.
(Jury enters courtroom)

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THE COURT: All right. Mr. Wilner, you may proceed with redirect whenever you're ready.

MR. WILNER: Thank you. May it please the Court.

REDIRECT EXAMINATION

BY MR. WILNER:

Q Dr. Farone, thank you for being with us. And this will just take a moment. You were asked some questions about various -- wait, let me get this straight. Excuse me one second. I don't want to lose my place, okay.

You were asked some questions about various types of cigarettes and various designs. And I want to see if I can just follow up on a few.

The -- you were asked a lot about Carlton, and this is a package of Carlton. And you, you pointed out, I think --

4251

MR. WILNER: Flip it over, Ginny.

Q There is some kind of designation, tar 1 milligram and nicotine .1. Do you see that?

A Yes, I do.

Q All right. Now, when we looked at the Lucky Strike package, were we able to find any reference whatsoever to even this tar and nicotine, the amount of tar and nicotine?

A No, we weren't.

Q Ever? As far as you know, ever on a Lucky Strike package?

A As far as I know, the only cigarettes that have the designation are the ones that any manufacturer makes that are their lowest ones. They never put it on the higher ones.

Q So you were asked a lot of what the government requires. Evidently, the government doesn't require you to put it on, but says if you want to put it on, you can.

A Right.

Q It doesn't control that?

A It doesn't control that.

Q Incidentally, you were asked a lot about government control. The government does not have jurisdiction, the federal government -- until the

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FDA gets jurisdiction over nicotine as a drug, if it does, the federal government doesn't have any jurisdiction over cigarettes, does it?

MR. NYHAN: Objection, leading and argumentative.

THE COURT: Okay. I'll sustain the objection to both.

MR. WILNER: Sure.

Q Tell -- you were asked whether the government has stopped, in effect, Brown &

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Williamson
from putting a particular product on the market, whether it's illegal.
A I was asked why they stopped, yes.
Q And is it your understanding the government has not stopped Brown & Williamson from putting whatever cigarette product it wants to on the market?
A My understanding is that any manufacturer is free to put whatever cigarette product they want to on the market.
Q And the government -- does the government have an arm, is there an arm of the government that has any, any regulatory authority, as far as you know, over cigarettes? I'm talking at present.
A The Bureau of Alcohol, Tobacco & Firearms for collecting taxes on cigarettes, but not for 4253
prescribing nicotine levels or tar levels or anything like that.
Q How about setting safety standards for how hazardous the product may be?
A As far as I know, there are no safety standards.
Q So if Brown & Williamson wanted to come out with a cigarette that had -- that resulted in fatal disease of 80 percent of the people who used it, as far as you understand it, that would be legal today?
MR. NYHAN: Objection, leading, argumentative.
THE COURT: Okay. I'll sustain the objection.
Q Would it be legal for Brown & Williamson to come out with a product, legal to come out with a product that caused a fatal disease in 80 percent of the people who used it?
MR. NYHAN: Objection, foundation.
THE COURT: I'll sustain the objection, Mr. Wilner.
Q Would it be legal for Brown & Williamson to come out with a cigarette that had any level of carcinogens in it?
MR. NYHAN: Objection, foundation.
4254
THE COURT: Would you approach the side bar a minute.
(Side-bar conference held)
THE COURT: My problem is, I don't know

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if he knows what the law is, okay. You're asking him what the law is. If you're going to ask him if he knows of any restrictions from putting any amount of tar and nicotine into those products he wants, then he can answer that.

But you're asking him about the law now and that always bothers me.

MR. WILNER: Your Honor, just in my humble defense, it's only what he asked. He asked it, that's all.

THE COURT: Again, I'm not talking about what you're asking him. It's the way you're asking him.

MR. WILNER: Just the way, okay.

(Side-bar conference concluded)

Q Dr. Farone, is there any restriction to your -- or any standard on how much tar and nicotine can be in a cigarette?

A No, there isn't.

Q Is there any restriction or standard as to -- let me go back to this.

4255

Remember you told us there were several types of chemicals that cause problems with cigarettes, including the nitrosamines, the aldehydes, the PAHs and various inorganics.

Is there any standard for how much of the tobacco specific nitrosamines, NNN and NNK, can be contained in a cigarette?

A No, there is not.

Q How much of this chemical NNN that we -- I don't know if we wrote it down, that chemical that you described as a carcinogen, how much is in Lucky Strike?

A I don't know that it's actually been measured in a Lucky Strike. That's one of the problems is that the industry, in general, does not measure or provide numbers on the products they actually sell.

It's always done with prototypes or tests or coded. So that information isn't available to the people.

Q How much is in Carlton?

A It's totally unknown to me. I mean, as far as I know, there are no test results that tell you any of those ingredients in those -- those products.

Q Is -- I mean, is there, is there a

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suggestion that some of these, in fact, lower tar cigarettes might be high in some of these carcinogens?

A Yes, there is.

Q And would anyone have any -- anybody who goes out to buy them have any way to know that?

A No, they wouldn't.

Q Would anyone buying a Lucky Strike have any way to know how to compare it to a Carlton, if they wanted to make a comparison?

A No. And recently in the -- I believe it's in the sales of -- it's either Eclipse or Premier, Carlton for the first time is starting to publish some of those numbers.

But for no other cigarette, that I know of, is that information given.

Q And how about -- let's look at Tareyton.

MR. WILNER: Let me see if we can inspect the pack of Tareyton, Ginny. Would you roll it over so we can see if there's anything on there?

Q It says low tar. I don't see -- let's see if there is any designation of how much tar and nicotine is in Tareyton.

Let me represent to you we don't -- there's nothing on there except the word low tar, does that

-- what does that mean?

A To one, you know, in the industry it means something lower than nine milligrams usually. But I don't know what it means to a consumer.

Q If somebody were wanting to compare Carlton, Tareyton and Lucky Strike, on what basis would they make that comparison?

A They really couldn't. They don't have the information.

Q You, you were asked about whether the market in Japan was something like 70 percent charcoal, charcoal filter. Do you remember that?

A Yes.

Q Was the inclusion of a charcoal filter something that you thought might be a design feature that might improve the safety of the product?

A It appears to be useful in reducing certain carcinogenic materials, yes.

Q In fact, what has been the Japanese experience, who have had 70 percent charcoal

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filter?
A Well, that's one of several hypotheses that have been advanced as to why lung cancer is less in Japan.
MR. NYHAN: Your Honor.
MR. WILNER: Okay.

4258

Q Has it been observed that lung cancer is less in Japan?
A Yes.
Q Even though their smoking rates are equivalent?
A Or greater, yes.
Q Now, what is the content of aldehydes for Lucky Strike, Carlton and Tareyton?
A Not known.
Q You say you don't know it. I mean, is it available? Have you looked at the published literature?
A Yes. I think I made the point that the amazing thing about the industry, one of the objections that I have is that they have consciously decided not to test.
MR. NYHAN: Your Honor, objection.
THE COURT: I'll hear your objection at the side bar.
(Side-bar conference held)
MR. NYHAN: He's been out of the industry for 14 years; therefore, he's not competent to speculate as to what the industry's reasons for doing things are.
THE COURT: I'll allow it over your

4259

objection.
I think he's testified that he's kept up, to a certain extent, with what they're doing. And he's testified that up to today they haven't done certain things.
MR. NYHAN: But now he's speculating about why they haven't done certain things. He can say what they have or haven't done, but he shouldn't be able to say why, because he's been out of the industry for over 14 years.
MR. WILNER: The cross was so wide range about why --
THE COURT: I'll allow the question. If you want to ask him on recross what information he's

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basing that on since he left, then I'll allow that.
So I'll allow it.
(Side-bar conference concluded)
Q Dr. Farone, did you say the industry was consciously avoiding testing its products?
A Yes, I did.
Q The -- and I'll ask you more about that in a second. But let me see if we can agree on what -- what some tests are that you would -- that you feel are appropriate.
Let me direct your attention to a document

4260

that's been already marked in evidence as B&W Can. 1, which is -- Can. 1, which is -- I'm sorry, we will get the number.
THE BAILIFF: Is it 32?
MR. WILNER: No, we will get it in a second.
MS. HARTLEY: Five.
THE COURT: Plaintiff's 5.
MS. HARTLEY: It's five.
MR. WILNER: Okay. Thank you, Stephanie.
MR. NYHAN: Can we have some identification, Your Honor?
MR. WILNER: Yes, I am. It's No. 5, Tab 14.
MS. HARTLEY: Fourteen, five.
Q So let me direct your attention to a document from 1981 that says from Brown -- from BAT, which says, How can we ensure that future group products have the lowest possible biological activity? Is that a good goal?
A Yes.
Q All right. So if we move it down a little bit.
MR. WILNER: A little bit further, Ginny.
Q It says criteria for choosing tests of

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biological activity, and it gives recommended, it says --
MR. WILNER: Ginny, could you zoom it out.
We are not seeing it. Thank you.
Q For this reason, tests are characterized as follows, recommended, it says reasonably well established with adequate background and knowledge.
MR. WILNER: I have the page and I sit here and say flip the page, you know (tenders document to

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Ginny).
Q And potentially useful, promising but not yet fully evaluated. Attention is drawn to areas where tests are not yet available.
Then do they list -- do you have it in front of you?
A Yes.
Q Thank you, okay. Then they list some biological tests, skin painting, well established, reliable, although relevance to man arguable.
Do you agree?
A Correct.
Q Then they have recommended inhalation toxicity, short-term, useful in that it measures the general toxicity of smoke in the respiratory tract of animals in a reasonable period of time.

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Just tell us what, what basically they're talking about when they say inhalation toxicity, short-term.
A That's exposing animals to large doses of smoke in a short term. We characterize tests as being either short-term or long-term depending on the length of exposure.
A typical long-term test can be as long as three years. A short-term test would be anything from one day to two weeks or a month or so.
Q And we've seen, I think, a long time ago in this trial, a document from American Tobacco where they did sebaceous skin testing at Acousta Paper Company?
A I recall the document, yes.
Q Now, that was way back in l953.
But my question is, is that -- is this the same idea? Is that, is that -- are we getting to the the same basic thrust?
A Well, the skin painting, I mean, these tests have gone through modification over time. But the idea is to expose animal cells or other kinds of living cells to the chemicals to determine what the cellular response or the whole animal response is.
These are typical in every field where one

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deals with a product where you could have biological interaction between human cells and the product that

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you're selling.
Q Okay. Bear with me a second. Hang on. Thank you. One second. I would like a picture of the mice.
MR. WILNER: Thank you. Yes.
Q The first, the first item was mouse skin painting, do you remember?
A Yes.
Q And you're aware, of course, of the classic mouse skin painting experiments in l953 by Wynder and Graham --
A Yes.
Q -- that used Lucky Strike condensate, produced 44 percent of cancers, or the mice had 44 percent of cancer?
MR. NYHAN: Your Honor, objection.
THE COURT: All right. I'll sustain the objection to the leading question, Mr. Wilner.
Q All right. You're familiar with the work of Wynder and Graham in this -- in the l953 paper?
A Yes, I am.
Q All right.
MR. NYHAN: Your Honor, this is also

4264

cumulative and it's beyond the scope of cross.
THE COURT: I'll allow it, up to this point.
Q Now, here's my question. Is there any reason to suspect that the Lucky Strike in l965 or '63, ten years later, had been improved so that it did not cause this problem ten years later?
MR. NYHAN: Same --
THE COURT: All right. I'll sustain the objection. You want him to speculate. You're saying is there any reason to suspect.
MR. WILNER: No, I'll ask him based on the documents. Absolutely, Your Honor.
MR. NYHAN: Your Honor, this is outside the scope.
THE COURT: Approach the side bar a minute.
(Side-bar conference held)
THE COURT: As far as outside the scope, I think you pretty much covered all the design.
MR. NYHAN: But I didn't do anything on animal testing, and that's what he's getting into.
MR. WILNER: Well, he did on the product. And when he says he didn't do it on this -- he covered the whole waterfront. He went through all the cigarette design.

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We're going to talk about biologic

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testing,
which does not only include animal testing but what
tests they performed. And that's exactly what they
talked about the whole time.
THE COURT: Well, I guess what bothers me,
you know, y'all both want to ask him medical
questions. Apparently, you want to do that. I'll
let y'all get into it, both of you, because I
sustained the objection when you tried to do it.
MR. WILNER: Right.
THE COURT: I wouldn't let Mr. Nyhan do it,
and now you want to do it.
MR. WILNER: No, not medical. This is,
this is biologic testing on rats.
THE COURT: Okay.
MR. NYHAN: But he hasn't -- has no
foundation, no background, and it wasn't covered on
cross. It's inappropriate.
THE COURT: I don't remember him going into
any of that area.
MR. WILNER: Well, he doesn't have to say
the words.
THE COURT: I understand that.
MR. WILNER: But when he discusses, Look
what I'm --
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THE COURT: I'll allow it because he asked
what kind of testing had been done and went over a
bunch of tests that, that the cigarette companies
apparently did.
When I say apparently did, I assume they
did. I don't mean that I'm skeptical.
MR. WILNER: Sure, I understand.
THE COURT: But I'll allow you to go into
that area. But I don't like you asking him -- you
know, I sustained the objection before I heard it.
MR. WILNER: I understand.
THE COURT: Because you're saying is there
any reason to suspect.
MR. WILNER: Oh, okay.
THE COURT: And, you know, you could ask
anybody any question with that preface, you know.
MR. WILNER: All right, that's fine.
(Side-bar conference concluded)
Q Dr. Farone, the technique of using mouse
painting was one of the early biological tests?
A Yes, it was.
Q Is there any evidence to suggest that any
results that you've seen that -- results from mouse
painting tests, which were done publicly in the '50s,

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were used to reduce the toxicity of Lucky Strike

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cigarettes?
A Not that I have seen.
Q As far as the information that you have based on the tar and nicotine numbers of Lucky Strike cigarettes through the years, has there been any reduction in toxicity of Lucky Strike cigarettes?
A Well, in general, if you rely only on tar and nicotine, in the absence of any other information, when I make a determination that it's safer because it has low tar, the assumption you're making is that the toxicity of that tar is the same.
So the less of it I have, the better off I am.
But we know that all tar is not created equal. So you have to test the products to make sure that the tar that you have created is no more toxic than it was before.
And I find no evidence in any of the documents that I've seen that any of these products have -- that are being sold have been tested to prove that their toxicity is any less than it was 50 years ago.
Q Moving on to different tests. We have the --
MR. WILNER: Slide it down just a little bit, Ginny. Thank you.

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Q We have -- we just talked about inhalation toxicity. We have short-term tests related to cancer, true?
A Yes.
Q And this is -- I represent to you, this is back from the 1981 Brown -- BAT document from inside the cigarette industry. And it says Ames test, well-established method of screening compounds for mutagenicity.
What is mutagenicity?
A It's the ability of a chemical --
MR. NYHAN: Same objection, Your Honor.
THE COURT: I'll allow it.
A Mutagenicity is the ability of a chemical to cause a change in cells. The cells can be as simple as bacterial cells, but it's indicative -- if the chemical deposits have changed in the cell, that's usually the first step on the way to cancer.

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That causes that change in the cell.
Q When you were working with Lever Brothers, did -- were you familiar with the Ames test?
A It was just coming in when I was there, yes. We were among the people to first try a test of that type.
Q If a -- would it be or was it appropriate

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to test things that would contact human beings with this Ames test?
A As a matter of fact, it was used on food products or a lot of other products, food additives. It's an early test. And Philip Morris, of course, used that test also on their products.
Q Is this one of the battery of tests that you talked about?
A Yes.
Q And if a food product were to fail this battery of tests, what would happen?
A Well, if it failed the entire battery, then you would be very concerned about it. You wouldn't use it. If it failed one or two of the tests, then you would study it more and try to figure out why it failed that particular test.
And if you didn't have a history of safe human use, you wouldn't use the material.
Q Is there record evidence from the internal documents from the industry of an attempt to use these biological tests to improve the product Lucky Strike?
A The, the records show that what they did was to look at specific ingredients. In other words, they would test burley versus bright, or they would

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test stems versus -- all of that kind of thing.
They might test the Cytrl, we talked about yesterday, the safer non -- the cellulosic new material.
So there's lots of testing that was done. But if you actually go and try to find, for example, a test of Lucky Strike versus Carlton or Lucky Strike versus Tareyton, we don't find any of that evidence that those were ever tested to validate the

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hypothesis, not only the hypothesis that Carlton is safer than Lucky Strike, they don't have any real scientific evidence to support that. That's based on all tar being created equal.

Q So what are the Ames test results for Lucky Strike?

A I don't know.

Q They've never been published?

A As far as I know, they've never been published. And I can't find reference to Lucky Strike specifically by year or by batch or by anything in the data that I've seen.

Q What about the Ames test result for Tareyton?

A I've never seen a result for Tareyton.

Q Have you looked?

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A Yes. I've tried to find specific results on these tests by brand.

At Philip Morris there was some indication that I had, even though I wasn't privy to it, that maybe some of that testing was being done in Germany or someplace.

But I never actually -- in all the data that's been released now, I've never seen test results by brand.

Q And there are other tests in this battery, including a chromosome-damage test; is that true?

A Yes.

Q And is that related to a test for cancer?

A Yes, it is. That's one of the things you worry about. It's also a test for what we call teratogenicity, the ability to -- if you change the chromosomes and somehow that is put into the offspring, your children can become deformed, or whatever, by the change in chromosomes.

Q So where is the chromosome testing on Lucky Strike?

A I haven't seen it.

Q Have you looked?

A Yes.

Q You said that the cigarette industry didn't

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want to do these tests on its commercial products; is that true?

A Yes, that is correct.

Q Why didn't they?

A The logic was --

MR. NYHAN: Objection, speculation.

MR. WILNER: I'll lay a foundation, Your

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Honor.
THE COURT: All right.
Q Do you know why they didn't?
A Yes, I do.
Q Why?
A They told me, We don't want to test any commercial products or any of our competitors' commercial products, while I was at Philip Morris, because if we had that information and it was to be brought out at a trial it could be very damaging to us. It could prove that we knew that the product caused damage.
Q Now, you were asked should a company be free -- or should the government ban cigarettes without a filter. Do you remember being asked that?
A Correct.
Q Well, two questions. First, should the -- since you were asked should the government ban it,

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should the FDA have jurisdiction over cigarettes so they can test them?
MR. NYHAN: Same objection, Your Honor.
THE COURT: I'll allow him to express his opinion.
A Yes. As a matter of fact, I've gone on record many times saying that I do believe FDA should have jurisdiction so it could -- test results for all of these products could be made public.
In other words, we have an FTC test on tar and nicotine. It's very easy to see that you could have a test, the battery or any battery that scientists would agree upon, and that all the results of products in those tests could be published.
And that's the only way that I can see where someone would have, really, the information to know whether one product was less carcinogenic or less damaging than another.
Q Has the cigarette industry fought against the regulation by the FDA?
A Yes, they have.
Q Secondly, although you said that -- that you believe that the government should not stop Brown & Williamson from making that cigarette, do you believe that Brown & Williamson should stand

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responsible for the cigarette?
MR. NYHAN: Objection.
THE COURT: I'll sustain that objection.

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MR. WILNER: He opened the door. Your Honor, could we be heard?
THE COURT: Yes.
(Side-bar conference held)
MR. WILNER: Your Honor, we think that when you ask somebody should it -- should the government ban it, I think you've opened the door to the, to the, to the corollary question, which is should the -- should the manufacturer be responsible, if he has that freedom, that's all.
THE COURT: Let me ask you this. Isn't that what you're asking the jury to decide?
MR. WILNER: Yes. But it's opening the door. I mean, once you say should -- I mean, I don't think I could have ever asked him on direct.
THE COURT: But I'm not going to let you ask it because of that.
MR. WILNER: But, you know, I mean, should the government ban it, I mean, he asked the question. I don't know what -- I don't even know why this witness could ever possibly speculate on whether the government should ban it. But having asked the

question and going into this philosophy --
THE COURT: That's different because, you know, if -- if you want to ask his opinion on certain subjects, that's fine. But when you ask that, you know, that's like asking him, you know --
MR. WILNER: Who should win the case.
THE COURT: Right.
MR. WILNER: Well, I know it is.
THE COURT: And I don't think it is ever proper to say --
MR. WILNER: Who should win.
THE COURT: -- was this illegal in your opinion, okay. And that's pretty much what you're saying.
Now, what was your objection?
MR. NYHAN: My objection is that it's improper. And I also object --
MR. WILNER: I'll withdraw it. I'll withdraw it.
MR. NYHAN: I object to this attempt to give counsel or the witness another opportunity to make the apportionment of fault argument that I can see coming.
MR. WILNER: Your Honor, they made an assumption of risk argument the whole case, even

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though that's not an area of the law at all. So for them to now say that --
THE COURT: Well, we can take care of that at the proper time. But I'll give you wide latitude. But if we are going to get finished with this witness today, we need to get on with it.
MR. WILNER: I agree. I withdrew the other.
THE COURT: I sustain your objection at this point.
(Side-bar conference concluded; change of reporter, 9:30 a.m.)

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Q All right. You were also asked about something called the Tobacco Working Group, which was a forum through the National Cancer Institute and others, right?
A Yes, it was.
Q And the question was, Well, was this group shut down? Do you remember?
A Yes.
Q Does the -- in your estimation, does the federal government or is the federal government required to spend taxpayer money to test cigarettes?
A No. That was one of the reasons given for why it was shut down because it wasn't felt -- politically, I think, it was that, you know, why should the federal government be spending money to do something that the industry itself should be doing.
Q Was there any reason that the industry scientists could not continue the work without the National Cancer Institute or anybody else being involved?
A Precisely, and that's what -- the industry scientists that we were -- the group wanted that work to be continued and we wanted the industry to go ahead and continue it.

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Q What did the industry do?
A Well, the industry set about setting up programs at various universities. In other words, there was an attempt to do some research, but it was always constricted by the fact that they didn't want information about products that were being sold to be made public; and, therefore, none of the results of the tests that were done at any group or scientist involved real products being sold. So you never really knew whether the changes that you were

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making were the right changes or not.
We tried to make them, but you never know from a test that the actual product that it ends up in is safer by all these tests. Then you don't know whether you're making progress or not.
Q So without doing the actual test on the -- if they didn't do the actual test on the product, did that hamper the development of a safer product?
MR. NYHAN: Objection. Leading, Your Honor.
THE COURT: Try not to lead him, Mr. Wilner.
MR. WILNER: I'll try not to.
Q Did it or did it not hamper the development of safer products if they didn't do

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testing on the product?
A Well, the problem with a lot of the changes that people like myself advocate is they are, as Mr. Nyhan pointed out, hypothetical to a certain extent. If you can't prove what you're saying is right, then of course you're hampered. So you have to do that testing to find out whether your hypothesis -- the way science works is you make a hypothesis and you test it. So if I'm not allowed to test it in the final product, then I don't know whether I've made a safer product or not.
Q While it was in operation, did the Tobacco Working Group recommend that tar and nicotine be reduced?
A Yes, they did.
Q Did the designers of Lucky Strike take that recommendation?
A No, Lucky Strike was not reduced over the time period that we saw.
Q Let me see -- I was flipping paper, I'm sorry.
Based on the published data from Lucky Strike, did the designers of Lucky Strike take into account the recommendations of the National Cancer Institute?

4280

A No, they didn't.
Q Now, you also were asked whether various products that could be manufactured would be or could be commercially successful. Do you remember?
A Yes, I was.
Q Now, part -- what role does marketing have, the expenditure of marketing and advertising and promotion on whether a product is commercially

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acceptable?
A It's a very large part. You have to explain to the --
MR. NYHAN: Objection, foundation.
MR. WILNER: Open the door, Your Honor.
MR. NYHAN: Could I take him on voir dire, Your Honor?
THE COURT: I'll sustain the objection. I don't know that he knows that information.
MR. WILNER: He was asked about it, Your Honor. I'll lay a foundation. That's fine.
THE COURT: All right.
Q Dr. Farone, you were asked about commercial acceptance of a product; do you remember?
A Yes, I was.
MR. NYHAN: Your Honor, may I take him on voir dire?

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MR. WILNER: I haven't finished my question.
THE COURT: I'll let him ask his question first.
Q Were you asked about commercial acceptance of a product?
A Yes, I was.
Q And weren't you asked whether or not a certain product that you had -- I think it was a product that you -- or some product modifications that you had suggested would be commercially feasible?
A Yes.
Q You were asked that?
A Yes, I was.
Q All right. In giving that answer, tell us what you mean by commercially feasible.
A Commercially feasible embodies the acceptance of the product by a consumer. You're trying to gain market share; trying to sell the product.
MR. NYHAN: Your Honor, may I take the witness on voir dire?
THE COURT: Approach the side bar.
(Side-bar conference held outside the hearing of the jury)

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THE COURT: You know, I think we're testing my memory. I believe Mr. Nyhan asked him the questions in that area --
MR. WILNER: Of course.
THE COURT: -- you're correct. But all I remember him saying is he didn't know the answers to the questions. I mean --
MR. WILNER: No, I don't think he said --

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no, that wasn't quite it.
THE COURT: He said that he didn't know because it's never been tested.
MR. WILNER: No, it's not about testing. That's a different issue.
THE COURT: Okay. But he asked him would the people buy it, in effect. I'm paraphrasing and --
MR. WILNER: And he said he didn't know.
THE COURT: He didn't know, okay.
MR. NYHAN: That's right, because it hadn't been tested.
THE COURT: Okay. So when he asks him about an area and he says I don't know, that doesn't mean you can ask him other questions about that area. He, in effect, is not an expert on marketing,

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right?
MR. WILNER: True, but I think he needs -- he needs to explain. He said he didn't know. He needs to explain why it is, because it sounds like that he didn't know because there is something wrong with the product. But really the reason he doesn't know is because he doesn't know how much marketing or how much promotion would go in it. That's the explanation.
THE COURT: Well, if you ask him that question, if he knows how much marketing goes into the marketing -- how much goes into the marketing of cigarettes --
MR. WILNER: Fine.
THE COURT: -- because he was asked that question previously about marketing, I will allow it. And I assume he's going to say, no, he doesn't know.
MR. WILNER: That's what I'll ask him.
MR. NYHAN: And if he does say he does knows something, I'd like the opportunity to voir dire him on it because we've established he doesn't have any knowledge in that area.
MR. WILNER: Well, we haven't established that.

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THE COURT: Well, I think, he's going to say he doesn't know.
(Side-bar conference concluded; proceedings resumed before the jury)
BY MR. WILNER:
Q Are you aware of how much marketing was put into various products, including Premier versus, say, Marlboro?
A Yes, it's in the literature.

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Q And does the amount of marketing that's put into a product affect its commercial success?
MR. NYHAN: Your Honor, may I take the witness on voir dire?
THE COURT: I'll allow him to answer that question. I don't know if I'd go any further in that area.
A Yes. I mean, part of the -- at the Levers Brothers job that I had we also were responsible for claims support. So there is always this issue of validating what you're going to say about a product with scientific information. And that, to my understanding, is very, very important in obtaining commercial success with a product.
Q Have consumers, to your knowledge, ever been told that Carlton might protect them from

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cancer but Lucky Strike might not?
A Not directly.
MR. WILNER: Two more and I'll be done. B&W CAN No. 23.
THE COURT: What number is that again?
MR. WILNER: No. 23.
THE COURT: What --
MR. WILNER: No, I'm getting it, Your Honor. I'm sorry. I need a list and I just don't have it.
THE COURT: 33?
MR. WILNER: 32.
THE COURT: Plaintiff's No. 32?
MR. WILNER: Yes.
Q Let me show you tab No. 23 of 32 on page five. We've previously seen this; I just want to ask your opinion.
This was a document from 1972, a BAT conference that says, A suggestion was made. Our aim should be to provide smoking pleasure accompanied by risk no greater than that with comparable habits, such as alcohol.
Do you agree as a cigarette designer that that is a worthy goal?
A That or less, yes.

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Q Has it been achieved in any way, shape or form?
A No.
MR. WILNER: 25.
Q Let me ask you on No. 25, tab No. 25, on No. 16. Now, this is a document from -- sorry -- 1974, from BAT. You were asked a lot about these biological tests and whether anybody believed them or not?
MR. WILNER: Will you focus in a little? Thank you.
Q BAT will accept that reduction of

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biological activity per cigarette is sufficient evidence of acceptability on health grounds as a basis for work on alternative smoking materials, both tobacco and nontobacco. Do you see that?
A Yes, I do.
Q Is that proper?
A That's proper.
Q Was it done?
A No.
Q Was it done for Lucky Strike?
A No, not that I'm aware of.
Q And the same document on page one from the BAT files, does it say that consumers will continue

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to expect the industry to mitigate any harmful effects its products may have. Do you agree?
A It does say that and I agree.
Q And you were asked about the various responsibilities about -- rather, who should do -- whose role it was to do what. Do you agree that the industry should mitigate the harmful effects in its products?
A Yes, I do.
Q Should it use all available technology to do so?
A Yes.
Q Has it done so?
A No, it has not.
Q Has The American Tobacco or Brown & Williamson done so in the Lucky Strike cigarette?
A No, they have not.
MR. WILNER: Thank you, Dr. Farone.
RECROSS-EXAMINATION
BY MR. NYHAN:
Q Doctor, let me ask you first. I'm just going to -- I won't be long -- just follow up on some things that Mr. Wilner raised.
You were asked about techniques to reduce nitrosamines --

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A Yes, I was.
Q -- in cigarettes? When comparing a cigarette with 17 milligrams of tar with a cigarette of one milligram of tar, for example, like a Carlton Red, there is a 90 percent reduction in nitrosamines; isn't that true?
A I haven't seen data on that.
Q This is your deposition on August 27, 1997.
A You're talking in general, not about your specific product?
Q Yes.
A Oh, okay. I thought you were referring

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to
your specific products. I've never seen --
Q Well, Carlton -- I'm sorry. Go ahead.
A I've never seen any data that tells me there's a 90 percent reduction in nitrosamines from my product to Carlton Red because I don't know what's in Carlton Red.
Q All right. But you agree that the cigarette that yields 17 milligrams of tar under the FTC method will have a total -- if the milligrams of tar as measured by the FTC method are reduced from 17 to one, you end up with a 90 percent reduction in nitrosamines, correct?

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A No. All tar is not created equal. Under the assumption that all tar is created equal, then the answer is correct, yes. I can agree to what -- the assumption I was making in answering all of the questions is that if I have, you know, 50 milligrams of nitrosamines, and I reduce everything proportionately, then I would get a 90 percent reduction.
But there is no evidence that we're reducing everything proportionately. As a matter of fact, there is evidence that we don't when we go to lower-tar brands.
Q Now, that was information that was published by Dr. Hoffman, Dietrich Hoffman?
A That's correct.
Q And you agree that if a cigarette containing 17 milligrams of tar as measured under the FTC method has total nitrosamines of 344, and that a cigarette that has one milligram of tar has total nitrosamines of 34, then you have achieved a 90 percent reduction, correct?
A If all of those things are true, then we have, yes.
Q It's obvious that American Tobacco Company and other companies did take steps to reduce

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nitrosamines in tobacco, didn't they?
MR. WILNER: Excuse me, Your Honor. They, as to what? Tobacco?
THE COURT: All right.
Q The American Tobacco Company and other companies took steps to reduce the nitrosamines in the commercial cigarettes they manufactured; isn't that true?
A Well, they took steps which should have been translated into reduction in nitrosamines, that

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is correct. But the evidence is that I'm looking for is what were those reductions. That's not available to anybody.

Q Now, you spoke about disclosure of specific constituents. You're aware that the Federal Trade Commission prohibited disclosure of the reduction of specific constituents that could be viewed as a health claim, true?

A Yes.

Q And that includes disclosure of carbon monoxide levels?

A Well --

Q If the FTC prohibited disclosure of carbon monoxide?

A You can't use it in your advertisements.

It's never prohibited to anybody from publishing a paper that lists the carbon monoxide contents of Lucky Strike versus Carlton.

Q Didn't the FTC prohibit disclosure of any constituent which had any actual or potential connection with health?

A It did not prohibit the publication of scientific literature that had made that comparison.

I think we're referring to claims that you can disclose versus what the public -- as a scientist in a university, for example, I can test your products and I can publish those results. I'm not prohibited from doing that by the FTC, to my knowledge. You're prohibited as a company from using those for health claims.

Q By the FTC?

A Yes.

Q And what circumstance, sir, was it when the FTC prohibited disclosure of a particular constituent level?

MR. WILNER: Vague as to time.

A What are you referring to?

Q I'm referring to your deposition, Doctor.

A I know, but, I mean, you're taking one

sentence.

THE COURT: In what context?

Q This is concerning circumstances that will -- first, when did the FTC prohibit disclosure of constituents in smoke, Doctor?

A I don't recall right now.

Q Was it during the time that you were employed at Philip Morris?

A I believe it was. I believe it was around that time.

Q Well, during that time when you were employed by Philip Morris, you understand that the FTC did prohibit tobacco companies from disclosing

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any particulate constituent level?
A Only the tobacco companies, not someone else independently doing the research.
Q But it was the FTC that prohibited the tobacco companies from disclosing the constituents in their cigarettes, correct?
A That's correct.
Q And that was true when you worked for Philip Morris?
A I believe so.
Q And it's true today, isn't it?
A Yes, sir. We knew how to get around that.

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Q Well, Doctor, let me ask you about another subject that you spoke about, and that's the mutagenesis assays.
A Yes.
Q It's your view that it's difficult to use the mutagenesis assay to make a conclusion regarding carcinogenesis; isn't that true?
A Difficult, but possible, yes.
Q There's no question that it's difficult; isn't that true?
A That's correct.
Q And you're aware that the 1981 Surgeon General's report says that mutagenesis always provides inconsistent results -- excuse me, could you slide that over.
You're aware that the 1981 Surgeon General's report says that mutagenesis assays provide inconsistent results and are of uncertain value for quantitative comparisons of relative carcinogenicity, correct?
A That's why you have to use a battery of tests and not just one, correct.
Q And you're also aware that cigarette condensate has been showed to cause varied, significant reductions of mutagenicity of certain

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tobacco-specific nitrosamines; is that right?
MR. WILNER: Object to the form.
A Well, I don't know if that's a commercial cigarette. I'm not sure what tobacco smoke they're talking about.
Q Well, it was in the smoke tested that you described in the past.
A Yes.
MR. WILNER: Object to the form.
Q Did you answer the question?

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THE COURT: I'll allow it if he can answer it.

THE WITNESS: I can answer it, I think, Your Honor.

A In some cases you do see reductions in certain tests, but it's important to understand when you interpret those tests where the smoke came from. Was that, for example, from a nitrosamine-free cigarette, was it from a Marlboro, was it from a Carlton? That's all I'm saying.

Yes, the answer, it can happen, but you have to know where it came from.

Q Now, you were also asked about the hypothetical model that you developed, the safer cigarette -- the hypothesis.

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A You asked me.

Q Mr. Wilner asked you about the hypothesis.

A I guess so.

Q Now, you provided a sample of a prototype of that, didn't you?

A No, it wasn't a sample because I can't give you a sample because I would be violating FDA law. What I did was to show you the way it could look if in fact it was done legally, correct.

Q All right. And that was -- you provided a sample of that at your deposition, correct?

MR. WILNER: Your Honor, this isn't valid recross.

THE COURT: I'll sustain the objection. If you want to be heard, I'll --

MR. NYHAN: Well, he did --

THE COURT: Approach.

(Side-bar conference held outside the hearing of the jury)

THE COURT: In the first place, I don't remember Mr. Wilner going into it on redirect.

MR. NYHAN: My understanding is he asked the doctor about this hypothetical safer cigarette.

MR. WILNER: The jury can hear you, sir.

MR. NYHAN: I'm sorry. And he said he

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couldn't test it because he hadn't developed a prototype. I want to show him in a deposition exhibit that he said was a prototype.

THE COURT: I think he was pretty clear even on cross-examination that what he showed you wasn't what he was talking about because he can't do it. He said he couldn't do it; he wouldn't be allowed to do it.

MR. NYHAN: But he did. That's all I want

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to --
THE COURT: No, because there's no -- what he's talking about, there's no chemical in there because they won't let him do it.
MR. NYHAN: All right.
(Side-bar conference concluded; proceedings resumed before the jury)
Q Doctor, one of the other topics that you addressed were the charcoal filter that's popular in Japan.
A Yes.
Q That charcoal filter has been on the Tareyton since 1954, right?
A I'm not sure. I don't know that that's the same filter they use in Japan.
Q Well, in any event, you're aware that

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American Tobacco Company came out with a charcoal filter cigarette, the Tareyton?
A Yes, I am.
Q And you know that that's been on the market at least since the '50s, right?
A That product has been on the market since the '50s.
Q Now, Mr. Wilner asked you about smoking levels in Japan. You understand that cigarette consumption on a per capita basis is much higher in Japan than it is in the United States?
A That's correct.
Q And yet lung cancer incidence rates in Japan are much lower than they are in the United States, correct?
A That is correct.
Q There are three theories as to why that occurs; isn't that true?
A At least, yes.
Q What are those?
A Well, there is the theory that the smoke is less carcinogenic. There is the theory that the Japanese don't inhale as deeply. And there is a third theory that there is some genetic or cultural dietary thing that offsets the carcinogenicity in

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Japan.
Q You've also heard that there are metabolic differences?
A I've heard, but that theory apparently has been debunked by the fact that the Japanese population in the United States doesn't have the same reduction.
Q You've heard that there are significant differences?
A Yes, the dietary. I mentioned that.
Q And no one knows which theory is correct;

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isn't that true?
MR. WILNER: Excuse me. No one knows? I object.
Q Do you have an opinion as to which theory is correct?
A I have an opinion, yes, I do.
Q Let me ask you about the Bureau of Alcohol and Taxes. You mentioned that in your response?
A No, it's the Bureau of Alcohol, Tobacco and Firearms.
Q I'm sorry, I short-circuited it a little bit.
That federal government agency, you said, is responsible for collecting taxes?

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A It's related to tax collection on both alcoholic beverages and tobacco.
Q And cigarettes, right?
A Cigarettes, yes.
Q How much tax is collected on a pack of cigarettes?
MR. WILNER: Your Honor, this isn't relevant to anything.
THE COURT: I'll sustain the objection.
Q Doctor, you were asked about different tar levels and nicotine levels in different cigarettes. As far as you're concerned, and you know that the Carlton Red has one milligram of tar -- 0.1 milligram of nicotine, the Carlton Ultra has less than 0.01 milligrams of tar and 0.002 milligrams of nicotine. It's your opinion that the lower the tar the better off you'll be, isn't it?
A As long as the tar is created equal, that is correct.
MR. NYHAN: I don't have anything further, Doctor.
THE COURT: Mr. Wilner.
MR. WILNER: With respect to just one or two.
THE COURT: All right, as long as it's

4300

directed at the recross.
MR. WILNER: Yes, sir, certainly.
FURTHER REDIRECT EXAMINATION
BY MR. WILNER:
Q You were asked if the FTC would not permit the tobacco companies from listing their ingredients

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or -- with the health claim. Do you remember being asked that?

A Yes, I do.

Q In follow up of that, did the FTC prohibit all health claims or did it, B, prohibit only health claims that could not be proven?

A You have to submit data and prove it and you have to have a rule on it.

Q So it's your understanding that if the data or the testing were submitted, that they could make those claims?

A That's my understanding, yes.

Q And you were also asked about -- that's all.

MR. WILNER: Thank you, Your Honor. Thank you, Dr. Farone.

THE COURT: May the doctor be excused?

MR. NYHAN: Yes, Your Honor. Thank you. I appreciate it.

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THE COURT: Counsel, approach the side bar.

(Side bar, Court and counsel)

THE COURT: Ladies and gentlemen, it's right at 10:00. We'll take the mid-morning recess. We are moving along this morning at a good pace, so be back in the jury room at 20 after and we'll be able to start back.

THE BAILIFF: All rise. This court is in recess until 10:20 by this clock.

(Jury exits; recess)

(Change of reporter; 10:00 a.m.)

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THE BAILIFF: The court will come to order. Be seated, please.

THE COURT: We are waiting for Mr. Wilner?

MR. MATTHEWS: I'll get him, Your Honor.

THE COURT: I didn't know if we were going to proceed without him.

MR. MATTHEWS: I don't think so.

THE COURT: Okay. Do you want to argue this motion at the side bar.

MR. WILNER: Sure.

(Side-bar conference held outside the hearing of the jury)

THE COURT: I have read the motion. Do you

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have any objection to it?
MR. WILNER: No.
THE COURT: I didn't think so. I think it states the Florida law. I intend for the verdict form to have a question concerning whether or not the actions of the defendant, Brown & Williamson, were such that the jury would award punitive damages, and to answer that question either yes or no.
If they should answer that question yes, then I will ask them to retire to the jury room. We will present -- I mean, so we can get coordinated. But then we will have the testimony concerning net worth of the

defendant.
MR. NYHAN: We can probably stipulate to that.
THE COURT: Okay. But they -- in Florida I have used this for the last three years at least. Then we send them back in to make a determination of what the punitive damages would be. That's after they've decided all the other issues. And, of course, if they answer no, then that's the end of it. But I didn't -- after reading the motion, I didn't think there would be any objection to it. I think it states what the present status of Florida law is.
MR. WILNER: Absolutely.
MR. BROWNING: One little procedure. Could you do it immediately following them bringing back the verdict?
THE COURT: Well, I think we are going to have to -- at least somebody is going to have to make a statement, and they have agreed that the net worth of the company is this, and then you can make an argument as to the amount of punitive damages. So I don't mean that it wouldn't -- there would be an additional argument on the sole issue of the amount of punitive damages, you know. Of course, then you could argue

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that
25 if they are going to send punitive damages, you can

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1 argue it should be small, and they could argue it should
2 be large.
3 I didn't mean to imply that there wasn't
4 going to be any additional argument. It will be solely
5 to that one issue.
6 MR. MATTHEWS: Judge, I'm sorry. On a
7 different topic, do you want to go ahead and address the
8 subrogation claim? Are you objecting to that?
9 MR. BROWNING: Yes, we are objecting to a
10 subrogation claim that they are attempting to put in,
11 Judge, because we feel that there's no predicate been
12 laid on that by showing that there's been a claim filed
13 against the estate for that amount.
14 THE COURT: I don't know what you are talking
15 about. What subrogation claim?
16 MR. BROWNING: Okay. We jumped in too quick.
17 MR. MATTHEWS: Let me go get it.
18 (Mr. Matthews retrieves document)
19 MR. MATTHEWS: Here is the subrogation claim
20 letter that was sent to the Maddoxes regarding the Blue
21 Cross and Blue Shield bills that were paid, as you can
22 see on the amount there, Your Honor.
23 THE COURT: Okay.
24 MR. MATTHEWS: It's our position that under
25 Florida Statute 768.76, Collateral Sources of Indemnity,

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1 that a provider of collateral sources, of which
2 obviously Blue Cross is, has a right of subrogation or
3 reimbursement, that has complied with this section,
4 shall have a right of reimbursement from a claimant to
5 whom it has provided collateral sources if such claimant
6 has recovered all or part --
7 THE COURT: I don't think there is any
8 argument that Blue Cross and Blue Shield would have a
9 subrogation claim on any judgment or verdict, but --
10 MR. MATTHEWS: Right.
11 THE COURT: But I think what we need to talk
12 about is how you intend to present it.

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MR. MATTHEWS: I understand.
THE COURT: You don't argue that they don't have a claim, do you?
MR. BROWNING: Well, my -- I guess in a way I do because I think the wrongful death statute, 768.21, determines what the claimants can get. And they can get funeral expenses -- not funeral -- I mean medical expenses that have been made a charge against the estate. And I feel that to show that this bill is proper, they would have had to file a proof of claim to qualify under this particular statute.
THE COURT: I'll tell you what you can do. Let's go ahead and have Ms. Widdick's testimony, and

then we will go in chambers. I don't have to leave as quickly. Knowing attorneys the way I do, I gave myself about an hour leeway. I know. And you-all are going to finish earlier?
MR. MATTHEWS: We are.
THE COURT: And so what we can do is if it becomes necessary to tell the jury about this, we can.
MR. MATTHEWS: We can publish it.
THE COURT: First thing Monday morning or something. But I am concerned about, number one, whether or not it can be a claim against the estate. Now, if it wasn't filed -- and number two, how we tell the jury about it.
MR. MATTHEWS: I understand. I mean, if Your Honor rules it's not a claim against the estate, we have no problem with that, but I think under the collateral indemnity. So I don't have any problem with that.
THE COURT: I want all of that on the record is what I am saying. Are you ready to proceed?
MR. MATTHEWS: Yes, Your Honor
(Side-bar conference concluded; proceedings resumed)
THE COURT: Mr. Matthews, are you ready to proceed?
MR. MATTHEWS: Yes, Your Honor.

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THE COURT: Mr. Browning.
MR. BROWNING: Yes, Your Honor.
THE COURT: Bring them in, please.
(Jury enters courtroom)
THE COURT: Ladies and gentlemen, the questions I received yesterday morning, I think I have answered one of the questions. I am still working on the other one. I think you know what I am talking about.
Okay. Call your next witness, please, Mr. Matthews.
MR. MATTHEWS: Your Honor, we would call Angela Widdick.
THE COURT: Ms. Widdick, please come up and have a seat on the witness stand. I will swear you once you are seated, ma'am. Good morning.
THE WITNESS: Good morning.
THE COURT: Raise your right hand, please, ma'am.
Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?
THE WITNESS: I do.
THE COURT: Thank you.
THE BAILIFF: You can adjust this up as you

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need it.
THE WITNESS: Okay.
MR. MATTHEWS: Good morning.
THE WITNESS: Good morning.
ANGELA B. WIDDICK,
having been produced and first duly sworn as a witness, testified as follows:
DIRECT EXAMINATION
BY MR. MATTHEWS:
Q Would you state your full name, for us.
A Angela B. Widdick.
Q Where do you live?
A [DELETED]
Q I am going to ask you some questions, just a few questions about your personal background, but let me ask you this first. You are the daughter of Roland Edward Maddox and Margaret Maddox; is that correct?
A Yes, I am.
Q Tell the jury when you were born.
A August 24th, 1954.
Q Where were you born?

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A In Karlsruhe, Germany.
Q And you have two sisters I think we heard earlier?
A Yes, I do.

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Q Peggy is the older?
A Yes, she is.
Q How much older is she than you?
A She was born in 1951.
Q About three years older?
A Yeah.
Q And then you have a younger sister, Betty?
A Yes.
Q How much younger is Betty?
A She was born in 1964.
Q So she was born here in the United States?
A Yes.
Q All right. Now, you -- are you married?
A Yes, I am.
Q You have two children?
A I have two boys.
Q How old are they?
A Eleven and twelve.
Q All right. Let me ask you this. You are the personal representative of your father's estate; is that correct?
A Yes, I am.
Q And was that at the request of your father?
A Yes, it is.
Q Let me ask you a little bit about when you

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were growing up with your family. Do you have any memory or recollection of living in Germany?
A No.
Q When is your first recollection of you as a member of the Maddox family?
A Baltimore, Maryland.
Q All right. Did you have a normal childhood?
A Yes, I did.
Q Attend elementary school in Baltimore?
A Yes.
Q Later your family -- I think your mother indicated a little while back you moved to Miami; is that correct?
A Yes, we did.
Q And was your sister born -- actually, Betty was born -- Betty was born in Baltimore?
A In Miami.
Q In Miami. Okay. Did you go to school in Miami?

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A Yes, for a short time.
Q And did you -- the family later moved to Fort Lauderdale?
A Yes, we did.
Q Did you go to school in Fort Lauderdale?
A Yes, I did.

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Q How about going up to your move to West Palm Beach. How old were you when your family moved to West Palm Beach?
A Oh, my. I really can't recall. They moved up there -- well, up to West Palm Beach prior to us moving up.
Q Okay. And did you attend school in -- I think I asked you -- in Dade County and then in Fort Lauderdale and ultimately in West Palm Beach?
A No, I was done in West Palm Beach.
Q At some point did you begin working while you were still living at home?
A Yes, I did, part-time.
Q At some point do you recall when you actually left home and were on your own?
A About 19, 20 years old.
Q Ninteen or 20 years old?
A Uh-huh (affirmative).
Q And that would have been, if my math is correct, sometime in the late '60s, early '70s, I guess?
A Yeah, early '70s.
Q Tell us without going into a lot of detail, Ms. Widdick, just generally what type of work you have been employed in since you have been an adult.
A I worked at Pompano racetrack over a 20-year

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period on and off.
Q And that's a harness track?
A Yes, it is.
Q What did you do at Pompano?
A I was a teller there.
Q In fact, we'll talk about it in a minute, but your dad worked there for a part of the time?
A Yes, he did.
Q What else have you done?
A I worked at Winn-Dixie for about nine years.
Q All right. We know your dad worked at Winn-Dixie at one point. Did you work with your dad at Winn-Dixie?
A No, I did not.

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Q What type of work did you do at Winn-Dixie?
A I started out working in the deli, and I became a manager.
Q What type of job duties did you have as a manager at Winn-Dixie?
A I had a department of my own that I had people working under me.
Q Did you -- did you work at the same Winn-Dixie store that your dad did?
A No, we weren't allowed to do that.
Q And tell us anything else that you have done.

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A I worked at the air conditioning company that he worked at.
Q That was May Air Conditioning?
A Right. Uh-huh.
Q We are going to ask you some questions about that in just a minute also, but do you recall, if not specifically, the approximate time frame that that occurred?
A It was so long ago.
Q Let's do it like this. Were you living in West Palm Beach?
A No, it was in Fort Lauderdale.
Q All right. Good. Okay. What did you do for May Air Conditioning during the period of time that you worked there?
A I'd answer the phones and do filing to help my father.
Q I think the jury heard a little bit about that earlier, but tell us, was your dad one of the employed there, and then one of the owners there at May Air Conditioning?
A He was an architect. He did the drawings of where the air conditioning units would go. He wasn't able to do anything outside of that because he had a back injury prior to that.

4314

Q When you say "wasn't able to do anything outside of that," by that do you mean he wasn't actually doing the repair and installation work?
A No.
Q He couldn't do that?
A He couldn't lift anything. He had a metal plate in his back, and he wasn't able to move or

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bend
over to a certain extent.
Q All right. Did your father receive some schooling or training in order to be able to do that, do the architectural drafting work?
A Yes. He went to a voc tech school to get some drafting hours. He got a certificate for that.
Q All right. And I think I was asking you about if he started with May Air Conditioning as an employee and then later became one of the owners of May Air Conditioning?
A Yes, he did. Uh-huh.
Q And after -- do you recall how long you worked approximately for May Air Conditioning?
A It was a few years. I just -- I couldn't remember.
Q What were your general job duties when you worked there?
A I filed, I did phone work, I did payroll.

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Q All right. And after working there for a few years, what else have you done?
A After I left there?
Q Yes.
A I worked at Winn-Dixie, worked at Pompano racetrack.
Q Let me go back and ask you, would you describe your childhood and your teenage -- I'm sorry, and your teenage years as being fairly normal?
A Fairly great.
Q Okay. Were you close to your father?
A Very much so.
Q Of the three daughters, would you consider yourself closer to him than the other two?
A We were all close to him, but I believe I was just a tad bit closer.
Q Okay. Let me ask you a few questions now about your dad's smoking history, cigarette smoking history. Okay?
A (Witness nods)
Q Let's start back from your earliest recollections which I think you indicated were in Baltimore. Do you recall as a kid, a young girl that your dad smoked cigarettes?
A Yes, I do.

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Q And were you aware of the fact that as you grew up your dad was smoking cigarettes?

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A Yes, uh-huh.
Q When you moved as a family to Miami and then to Fort Lauderdale, you were still living in the household; is that correct?
A Yes.
Q Were you aware during those periods of times that he smoked cigarettes?
A Yes.
Q How about after you kind of went out on your own? Were you still close to your mom and your dad?
A Yes, very much.
Q Did you live essentially in the same area that they did?
A Yes, I did. It wasn't very far. It was a few miles away.
Q Did you see them on a pretty regular basis?
A I saw my dad at the racetrack, and then I would come to visit at the house.
Q Would you visit the house fairly frequent?
A Oh, yes.
Q In addition to that, you worked with your dad at May Air Conditioning also?
A Yes, I did.

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Q And during that entire period of time, do you know whether or not he smoked cigarettes?
A Yes, he did.
Q And let me ask you if from your recollection of observing your dad smoking cigarettes, do you recall what brand of cigarettes that he smoked?
A Lucky Strike.
Q Were you ever aware that he smoked any other brand of cigarettes?
A No.
Q If he had smoked another brand of cigarettes at one -- you are not telling the jury that he didn't. You just don't know?
A I wouldn't know.
Q Lucky Strikes were the only brand that you saw?
A Right. Uh-huh.
Q In fact, and I think your mother testified a little bit about this, but let me ask you. When you and your sisters were growing up, was one of the

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presents
21 that you would give your father at Christmas a package
22 or a carton of Lucky Strike cigarettes?
23 A Yeah.
24 Q Okay. Let me show you what's already been
25 marked into evidence as Exhibit 13 and ask you if you

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1 recognize that photograph.
2 A Yeah.
3 Q Okay. That's your dad, your mom and you and
4 Peggy in the photograph; is that correct?
5 A That's my grandmother.
6 Q I'm sorry.
7 A My mother took the picture.
8 Q Your mother took the picture. And which one
9 of the little girls is you?
10 A The one with the curly hair.
11 Q The one with the curly hair. Okay. Do you
12 recall the date that that photograph was taken,
13 Ms. Widdick?
14 A Oh, I was young. It was in Baltimore, I
15 believe. I'd say I was probably six or seven.
16 Q Okay. And was this a fairly typical scene at
17 Christmas in the years when you and your sisters were
18 growing up that you would do that?
19 A Yes.
20 Q Do you recall for approximately how long you
21 did that?
22 A Oh, I'd say until I moved out.
23 Q Okay. And I think you indicated sometime in
24 your late teens, maybe early 20s?
25 A Right. That was the last recollection I had.

4319
1 Q All right. And the presents that you -- the
2 cartons of cigarettes that you and your sisters would
3 give to your dad each Christmas, were they always Lucky
4 Strikes?
5 A Yeah.
6 Q Yes?
7 A Yes.
8 Q Were there ever any other brands that you
9 gave?
10 A No.
11 Q And I think I asked you, but let me ask

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you
this. Did you ever see a carton or package of cigarettes that your dad had that were not Lucky Strikes?
A No.
Q Your mom had told us earlier that at some point, I think in 1963, she had stopped smoking. Do you recall -- do you have any recollection or memory of that?
A I know she had some problems with her goiter or thyroid, something that -- to that matter, and she had quit.
Q All right. Let me ask you about the time period, first of all, before that, before she stopped. Do you recall whether either of your parents ever smoked

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cigarettes in the house?
A No, they never did.
Q Even before she stopped they never did?
A Even before she stopped.
Q Did they ever discuss that with you as to why?
A No. It was just something that I noticed that they never did.
Q All right. And after your mother stopped, in your recollection of your mother stopping, did your dad continue that practice of smoking outside?
A Yes, he did.
Q I don't know if I asked you earlier, but let me make sure. The cigarettes that you observed your father smoke over the course of his lifetime and to your recollection, were they always filtered or unfiltered Lucky Strikes?
A Unfiltered.
Q During the period of time that you were growing up and that you were around your father after that, did you ever hear your father use a phrase like "cancer sticks" or "coffin nails" in referring to his cigarettes?
A Never.
Q Did you ever hear him use those terms under

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any circumstances?

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A No.
Q Did your father have kind of a name that he would use to describe his cigarettes?
A He called them stogies.
Q Stogies?
A Uh-huh (affirmative).
Q Okay. When he would see a Lucky Strike ad, do you have a recollection, either a billboard or something in a magazine, did you ever recall him reacting to that ad?
MR. BROWNING: Objection. Hearsay.
THE COURT: She can testify to her observations, Mr. Browning, but not to what he said.
MR. MATTHEWS: Sure.
Q Did he react -- could you tell that he would react to those ads?
A If he would see a commercial on TV, he would react and say, Those are my --
MR. BROWNING: Objection, Your Honor. Hearsay.
THE COURT: I'll sustain the objection.
Q But you could observe and watch his physical reaction to it?
A Yeah.

Q When you were -- I think your mother had told us that when she stopped in 1963 that your father had attempted to smoke -- or stop. Do you have any recollection of that?
A I remember he tried to quit. It was in the late '60s.
Q But specifically with regards to 1963, do you recall any recollection of that?
A No. No.
Q Okay. Then I think you said in the late '60s or early '70s you were aware of his attempts to stop -- became aware of his attempts; is that correct?
A Yes.
Q Tell the jury, if you would, please, what you recall, how many times, and what were the occasions basically.
A It was several times. I remember in the late '60s he was trying to quit. In the '70s when I worked at the racetrack with him he was trying to quit. I mean, I couldn't count all the times that he was trying to quit on my fingertips. Every time I turned

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around he
tried to quit.
Q Did you ever -- did he ever discuss with you
why he was attempting to quit?
A No.

4323
Q Did you ever discuss with -- did you ever say
anything to him about why he was attempting to quit?
A No.
Q You mentioned a time at the Pompano
racetrack. Let's talk about that for just a minute. I
think you had indicated that you had started working at
the track at one point?
A Yes.
Q And, in fact, did you suggest to your dad
that they might have a job opening that he could work
there part time?
A They were taking applications, and he came in
and applied for it.
Q And how -- I don't want to go into detail on
the job, but just tell the jury, was that a part-time
job for your dad?
A Yes, it was.
Q And what were his hours during that period of
time?
A He worked -- it would be like a Thursday,
Friday or Saturday, or Wednesday, Friday, Saturday.
Three days. I worked there five or six days; he worked
there three days. The hours were basically we would be
in at seven at night and usually be there like 10:30,
11:00 at night.

4324
Q And I think you told us you worked as a
cashier?
A A teller.
Q Teller. Did he have basically the same job?
A Yes, uh-huh.
Q And at some point while you were working
there did the two of you bet or have an agreement to try
to stop smoking?
A Never a bet moneywise, but it was a -- it was
like an agreement, like a little bet that we would try

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to quit together.
Q All right. You were smoking at the time?
A Yes, I was.
Q How long had you smoked?
A I started when I was just hitting 16.
Q All right. And -- how long did your dad go on that occasion when you had the little bet at Pompano track, how long did he go without smoking?
A During that -- just that one week period, he didn't smoke when I was there, but I could smell the smoke on him when he came to work.
Q Okay. Did you ever ask him about it?
A No.
Q At some point later on did you actually observe him smoking cigarettes again?

4325

A Yes.
Q Were those Lucky Strike cigarettes that he was smoking on that occasion?
A Yes.
Q Were there other times that you observed your dad attempt to stop smoking after the incident at the Pompano track?
A Several times in the '80s, again. In the '90s.
Q Do you recall -- could you tell the jury as best you can recall, if not specifically, approximately, what the longest period of time that you would observe your dad go without smoking?
A Maybe a day or two.
Q All right.
A Then again, I don't know what he smoked at night, so, you know. I mean, I wasn't with him 24 hours a day.
Q Sure. Okay. Let me ask you this. From simply observing your dad and knowing him as you did, could you tell when he was not smoking cigarettes or attempting to stop smoking?
A Absolutely.
Q Tell the jury what it was like when he would stop smoking cigarettes.

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A He became a different person. He was nervous, he was tense, he got agitated very easily.

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If you talked to him he was jumpy. He couldn't eat and have a meal, and after the meal he would be agitated and he could get cold sweats. He wasn't himself. He wasn't dad.

Q This was something you could see?

A Oh, absolutely.

Q Without him even telling you that he stopped?

A Right.

Q Did your dad attempt to use nicotine gum or the patches at any time to your knowledge?

A I think he tried everything that was possibly available.

Q Let me ask you about that. Did he ever try medication to your knowledge?

A I don't know.

Q All right. How about hypnosis?

A No.

Q But he had tried as far as you were aware the patches and the nicotine gum?

A That, and then he had -- I think at the very beginning they had these little filters that they would come out with. That was probably the first thing they ever came out with they put on the tip of the cigarette.

4327

That was to try to help you quit smoking.

Q And he tried those?

A He tried those.

Q But the longest that you are aware of was a matter of days I think you had said that he stopped smoking?

A Yes.

Q Let me ask you a few questions about your dad's smoking habits. When you were growing up and living in the house, did you -- were you aware of whether your father would smoke a cigarette as soon as he got up in the morning?

A First thing in the morning.

Q Would he have a cigarette with his coffee or with breakfast?

A He would take his coffee outside and he would have a cigarette.

Q Right.

A Right after he ate, instantly he would be

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outside.
Q How about when he was driving in a car? Would he smoke a cigarette while he was driving in a car?
A I can't remember, but I know that when he did with my mom, he would have it hanging out the window,

4328
but I don't know -- I mean, I can't remember.
Q Do you ever recall any incidence when you were growing up when your dad would be outside smoking when the weather was bad?
A Yes. I remember when I was a little girl once, and I'll never forget it. It sticks out, I mean. We had a house in the outskirts of Baltimore. We lived out in the country, and we had a little bitty porch, and I'd go outside, and it was pouring rain, and Daddy was out there smoking a cigarette. And I asked him why he was doing that and he -- because it was raining --
MR. BROWNING: Object.
Q Don't -- don't --
MR. MATTHEWS: We are not offering it for the truth or veracity of what he said, but --
Q Don't tell us what he said. Just tell us what you observed. He was out in the rain?
A He was out there smoking a cigarette in the rain.
Q Was that unusual in your experience as you were growing up?
A Yeah. No, was it unusual for him to do that? No. He would be out there rain, snow or what have you.
Q All right. During the period of time that you were growing up and right up until the time your
4329
father stopped smoking cigarettes, did you have a chance to observe how much he would smoke, how many packs he would smoke?
A Quite a bit. It was, I'd say, about a pack and a half a day or so.
Q You never measured exactly. You never

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counted how many he'd smoke, but that was just an estimate on your part?
A Yes.
Q When your father was smoking the cigarettes, in your observation would he smoke the cigarettes down to the end?
A Down to the very tip.
Q Let me ask you a few questions about your dad. Was your dad the type of person who would read the newspaper from cover to cover?
A No. He would read the sports sections of the paper, or if that front headline seemed to just glare at him, he would grab that front headline. But actually sit there and read what that front headline was about, he was not that way.
Q How about in terms of whether he watched the evening news. As you grew up do you recall if the family would sit around and watch the evening news?
A No, we watched movies together.

Q Movies?
A Yeah.
Q Would he also watch TV shows on occasion?
A Oh, yeah.
Q Do you recall any of his favorite TV shows?
A He watched Dean Martin, he watched Jackie Gleason, I Love Lucy. A lot of sitcoms.
Q Do you have a recollection when he would watch those as to whether the performers would be smoking?
A Oh, absolutely. They were all smoking.
Q At some point in 1996 -- let me ask you this. Up until his diagnosis with lung cancer in 1996, how would you describe the overall state of your father's health?
A He was very active. He was -- if I had to describe my father, I would be here all day.
Q Okay. We don't have all day, but --
A I know. He was always doing things for the family. He would go bike riding with us. He would take walks with my mom. He would come to my son's baseball games.
Q Okay. Let me ask you this. Was your

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dad the
kind of person who had a lot of outside hobbies or
activities that he liked to engage in?

4331
A He never did anything outside of the
family.
We always did everything together.
Q All right. And that was all during the
period of time that you were growing up?
A Ever since I was little.
Q All right. Your dad became ill, I think
your
mother said, around the summer of 1996. Do you
recall
that?
A Yes, I do.
Q He was living in West Palm Beach. You
were
married, and where were you living at the time?
A We moved up to West Palm Beach. It will
be
five years this coming August.
Q And when you say "we," you mean your
husband
and your boys?
A My husband and my children.
Q How far away was your house from your
mom and
your dad's house?
A In West Palm Beach?
Q Yes.
A About five miles, six miles.
Q And at some point, and I want to get
through
this, at some point you became aware that your
father
had been diagnosed with lung cancer; is that
correct?
A Yes.
4332
Q All right. And, in fact, you and your
sister
Betty, were you aware of that fact before your dad
and
your mom were?
A Yes, we were.
Q And just very briefly tell us how you
found
out about that.
A His pulmonary doctor had called us.
Q Dr. Ludwig?
A Right. And we had asked him to let us
know
when we can get an appointment to come in. He had
called us and told us the results.
Q All right. And as a result of that, you
weren't able to get a referral back to Dr. Ludwig
for a
couple of days?
A We tried to get a referral, and it took
two
days to get a referral so we could get my dad in to

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have
him talk to him.
Q You wanted the doctor to tell him face-to-face.
A Yeah, I didn't want him to call on the telephone.
Q All right. And so a couple of days later the family went to Dr. Ludwig's office?
A Yes, we did.
Q And were you present?

4333
A Yes, I was.
Q Was Betty present?
A Yes, she was.
Q And was your dad and your mom present?
A Yes.
Q And Dr. Ludwig told your father on that occasion that he had lung cancer?
A Yes, uh-huh.
Q Did he tell him without anybody asking -- did Dr. Ludwig tell your father in his opinion the cancer was cigarette related?
A Yes, he did.
(Change of reporters, 10:50 a.m.)

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Q Did y'all -- by y'all, I'm using it in a southern -- meaning everybody in the family. Did y'all have questions of Dr. Ludwig about what the prospects were and what treatments could be done and so forth?
A We asked questions. My dad hardly talked.
Q How about your mom? Was she able to ask questions?
A She was frozen.
Q Would it be fair to say that you and Betty were the ones primarily asking questions?
A We asked what we could do. And he mentioned chemotherapy radiation. He said that daddy wasn't a surgical candidate because of the emphysema.
MR. BROWNING: I'm going to have to object on hearsay at this point.
MR. MATTHEWS: We're not offering it for the truth or veracity --
THE COURT: I'll allow it for that purpose.
Q Let me see -- Mrs. Widdick, let me see if I can skip some of this just a little bit.
You and Betty, I think, in fact, explored some options with some other clinic centers about

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treatment for your dad; is that correct?
A Yes, we did.
Q In fact, I think one of the places you told me you contacted was M. D. Anderson in Houston?
A M. D. Anderson in Texas.
Q And they had some sort of gene therapy that they were --
A It was p53 gene therapy.
Q Did your dad make an application for treatment at M. D. Anderson?
A Yes, he did.
Q Was he turned down for that treatment?
A Yes, he was.
Q Was that based on the emphysema?
A Yes, it was.
Q Again, your dad underwent some chemotherapy following his diagnosis in August of '96; is that correct?
A Yes, he did.
Q And tell us just generally how that went.
What was his progress when he was going through chemotherapy?
A After the first treatment, he was okay. And then the second treatment, he started to deteriorate, he had a stroke. And then after the

third one, he got -- it was really bad.
Q Okay. Did he lose weight?
A He lost a lot of weight.
Q I know this is tough on you. I'm not going to draw it out but I do want to ask you one --
A I'm trying to hold back.
Q I'm sorry?
A I'm trying to hold back.
Q That's okay. You're doing fine. When you heard Dr. Feingold testify a little bit earlier were you aware of some of the details that Dr. Feingold talked about?
A No.
Q And did that upset you when you heard those details?
A I didn't realize my dad was that bad off.
Q Okay. Mrs. Widdick, what I'd like to ask you about is -- just a couple of questions, a few questions if I could, about what your dad was like as a father when you were growing up.
Can you describe him for the jury in terms of what he was like as a father.
MR. BROWNING: Objection. Could we approach, Your Honor?
(Side-bar conference held outside the hearing of the jury)

MR. BROWNING: I think this gets into claims for survivors, and there are no claims for

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pain and suffering for the survivors because they're all over 25. It's only for the spouse.

MR. MATTHEWS: I don't disagree with him, Judge. What I was trying to ask was what was he like as a person, could you describe him. I'll just reword the question.

THE COURT: I'll let you ask that.

(Side-bar conference concluded; proceedings resumed before the jury)

Q Mrs. Widdick, let me rephrase the question and ask it this way. Tell us what your dad was like as a person.

A He would give the shirt off his back. He was gentle, he was kind, he never had a harsh word for anybody.

Q If he was sitting in a group of people in a conversation that he didn't -- that he disagreed with, did you observe how he would react in those situations?

A He'd sit there. He wouldn't be rude to get up and walk away.

Q Over the years as you were growing up and

even as you became an adult and as you married, did you have a chance to observe the relationship that your mother and father had?

A (Witness nods head affirmatively)

Q I want to ask you about that just briefly. Could you describe for us the relationship that they had?

A They had a marriage made in heaven. They were the happiest couple you can ever imagine. They never argued, they never fought.

Q Was your mother dependent upon your dad?

A Yes, she was.

Q Since your dad's death, could you tell us what you've observed in your mother in terms of how she's reacted?

A She's having a hard time.

Q Do you think your mother has fully accepted the fact that your dad has died?

A I think she's still in denial. It's hard. It's only been a year.

Q Did your dad ever smoke cigarettes from the time of his diagnosis of lung cancer to the date of his death?

A No, no.

MR. MATTHEWS: May I have just a moment

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Your Honor?
(Discussion off record)
MR. MATTHEWS: Thank you, Judge.
THE COURT: All right. Mr. Browning, you may inquire.
MR. BROWNING: May we have just a couple of minutes? I want to put up the board.
THE COURT: All right. Ladies and gentlemen, I'll ask you to step back in the jury room for just a minute.
(Jury exits courtroom)
MR. MATTHEWS: Judge, I just wanted to preserve my right that we didn't get into the matter of a lien based on the conversation that we had.
MR. BROWNING: No objection.
THE COURT: I think it's clear on the record.
MR. MATTHEWS: When I stopped my questioning, I don't --
THE COURT: I understand.
(Discussion off record and recess)
THE COURT: Bring them in, please.
(Jury enters courtroom)
THE COURT: All right. Mr. Browning, you may proceed.

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MR. BROWNING: May it please the court.
CROSS-EXAMINATION
BY MR. BROWNING:
Q Good morning, Mrs. Widdick.
A Good morning.
Q I want to ask you a few questions. And if you feel like you have to cry, we'll just stop and give you a chance to do so.
A Thank you.
Q Now, Mrs. Widdick, I believe you stated that you started smoking in the early 1970s; is that correct?
A I was barely 16 when I started smoking.
Q Okay. 1970s. And when you first started smoking, you hid that fact from your parents, didn't you?
A Yes, I did.
Q And you hid that fact for approximately a year; isn't that correct?
A I don't know how long.
Q But it was a considerable period of time. And you hid that because you knew that they would disapprove of you smoking; isn't that correct?
A I wasn't sure what they would think.
Q Hadn't they lectured you about not smoking

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as you were growing up in the house?
A No.
Q You never had any conversation with them about the health risks of smoking as you grew up?
A No.
Q Did you ever hear anything about it at school?
A No, I didn't.
Q Okay. Did you later divulge to your mother that you were smoking?
A Yes, I did.
Q At that time, she expressed considerable disappointment about that, didn't she?
A Not really.
Q She didn't disapprove?
A No.
Q Isn't it true that she didn't want you to smoke and told you so?
A Not in the house.
Q Not in the house. Okay. So she didn't care if you smoked outside?
A It's not a matter of not caring. She just didn't say much about the fact that I was smoking.
Q Let me ask you this: Did she express her disapproval of your smoking?

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A No.
Q Never said anything to you about that she wanted you to stop?
A No.
Q Do you recall giving your deposition on February the 5th of this year here at the Duval -- in Duval County?
A Yes, I do.
Q And I want to ask you if you were asked these particular questions.
THE COURT: What page?
MR. BROWNING: Excuse me, page 79 and 80. I'll wait until Mr. Matthews gets his deposition.
MR. MATTHEWS: Go ahead.
Q Were you asked the following questions to which you gave the following answer?
Question: "She wasn't concerned for your health that you were smoking; is that your testimony?"
Answer: "She did not want me to smoke."
Question: "And she told you that, didn't she?"
Answer: "And she told me that, yes."

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You recall giving those responses to those particular questions?

A She did say that later on in the years as my smoking habit continued, but it wasn't in the beginning.

Q But these are the answers that you stated?

A Yes. But it wasn't in the beginning when I first started smoking.

Q And you assumed it was because of health considerations, didn't you?

MR. MATTHEWS: Judge, I object. I don't know that it's relevant.

THE COURT: Wait a minute. You can object, but you can't argue it.

MR. MATTHEWS: Object as to relevancy, Judge.

THE COURT: Approach the side-bar.

(Side-bar conference held outside the hearing of the jury)

THE COURT: What's the relevance about her assumption?

MR. BROWNING: Well, it's awareness of -- the mother did not want her to smoke, and they're saying that they didn't read the news, they didn't know anything about it being a health risk. And this shows that she was telling her daughter she didn't want her to smoke, it was based on health.

MR. MATTHEWS: But that's not the -- the question was, you assumed it was because your mother... What relevance is it what her assumption was as to what her mother knew?

THE COURT: Obviously, he's got the deposition, and that's what she said in the deposition, apparently.

So what I'm getting at is, normally, I would not allow it. But I think I'm probably going to because she said she never heard anything in the house; she never heard anything at school about any health hazards. So I think it would be a legitimate question if she's saying, "I assume that."

But I think, before you ask that, you have to go in time, because she's already said at first she didn't do that. And if you can establish it was at the time she was smoking at 16 or 17, that's different. But she's already said pretty clearly that it was only at a later date that her mother

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expressed concern.
MR. MATTHEWS: I understand that, Judge. But maybe what I'm concerned about -- maybe I didn't express myself very clearly -- but her claim is only as a personal; representative. If she read the 1964 Surgeon General's report cover to cover, what

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difference does it make about what she knew? It has no basis. She has no claim on that.
THE COURT: Unless she received information from -- if she said, I learned about it at school, I wouldn't let him go into it.
MR. MATTHEWS: Right. But here's my point. If she says, if he were to ask her, did your mother tell you anything about it or did your dad tell you anything about it, that might be admissible.
But what he's asked her is that she told you that she didn't want you to smoke. And then the next question is, you assumed that was for your health. What difference does it make? That's my point. That's what I want to put on the record.
THE COURT: My point is, it wouldn't make any difference except, right now, we don't know how she even discovered that. She said she didn't know that from school, she didn't know it from home. Why would she have a concern?
MR. MATTHEWS: My point is, what difference -- she doesn't have a claim. It's not her claim.
THE COURT: Okay. I think I'm going to sustain the objection, Mr. Browning, on that area of

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what she thought. Now you can ask her, you know, what her parents imparted to her and everything, but I think, you know, her speculation on why -- okay.
(Side-bar conference concluded; proceedings resumed before the jury)
Q Now, Mrs. Widdick, after your mother expressed disapproval about your smoking, your father also let you know that he wanted you to stop smoking, didn't he?
A I believe he probably wanted me to stop.
Q He did. And that was because of health reasons that he expressed to you, wasn't it?
MR. MATTHEWS: Again, I object unless he's

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asking her --
THE COURT: What time period are you talking about, Mr. Browning?
MR. BROWNING: I'll lay a predicate on that.
Q When did you have the discussion with your father and he told you that he didn't want you to smoke?
A I don't remember.
Q Would it have been in the early '70s there at the dog track?
A We had a lot of discussions.

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Q You had a lot of discussions about your smoking?
A Not just smoking, but normal discussions.
Q But what I'm asking about, specifically, is when he expressed displeasure with your smoking and urged you to stop; do you remember when that was?
A I believe it was when we were both trying to quit.
Q When you were both trying to quit and that would have been there at the dog track; is that correct?
A It's a racetrack, horse track.
Q All right. Horse track, excuse me. I'm from the area where there's dogs. Okay.
Now, Mrs. Widdick, when was the first time that you obtained awareness that smoking had health risks associated with it?
A I don't believe I knew of any risks. I've seen labels coming out, but nothing specified there were risks.
Q You did not associate cigarette smoking and health risks?
MR. MATTHEWS: Again, Judge, I object on the grounds of relevance.

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THE COURT: I'll allow it.
A Could you repeat that, please?
Q All right. I'll just ask you another way.
Did you assume that smoking was safe for you until about 1980?
A Yes, I did.
Q Okay. And you had not seen any smoking ads on television previous to 1980?
A When I was younger, I would see them on television, on the commercials.
Q The commercials advising you not to

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smoke?
A No. They had commercials of talking how good cigarettes were.
Q But you never saw any antismoking commercials?
A Not until recently.
Q In 1980, though, you became aware that there were health risks associated with smoking, correct?
A The labels say that there was health problems or health dangers, but it never said "risks." It never specified what kind of dangers there were.
Q But you became aware that it was dangerous

at that time, and you had always thought it was safe
to smoke after 1980; is that correct?
A No, I didn't. I didn't know there was --
I mean, it didn't come out and say "Cigarettes will
kill you," so I didn't think that there was any major risks.
Q All right. When was the first time that you heard that there were any health risks with smoking, Mrs. Widdick?
A Later in the '80s.
Q Okay, in the '80s. Now you smoked cigarettes yourself, correct?
A Yes, I did.
Q And you smoked them about how many years?
A Just barely 16 and I quit in 1983.
Q So you smoked about 13 years; is that about right?
A Around there.
Q Okay. And how many packages a day did you
smoke?
A I started with a few cigarettes and I went
up to a pack -- almost two packs a day.
Q About two packs a day. And so that would
be about 700 packages a year; is that correct?
A I guess.

Q Times two. We're going to round these things off where I won't do bad math here in front of this jury. 730 packages a year; isn't that correct?
A If you're going by two packs a day, it's -- can't figure that out real quick, but I'll take your word for it.
Q And you smoked for about 13 years, right?
MR. MATTHEWS: Judge, again, I really object to relevance.
THE COURT: Mr. Browning, will you approach the side bar?
(Side-bar conference held outside the

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hearing of the jury)
MR. MATTHEWS: It's not her claim.
THE COURT: Where is this going? I don't understand the relevancy of how many cigarettes she smoked and how many that equaled over a period of time.
MR. BROWNING: It's going to get back to the number of warnings on those packages of cigarettes that she smoked that she said she had no idea about health risks before that, Your Honor.
And she was very close to her father, saying that he didn't know these things, and I think

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it's relevant that she knew there were health risks concerning smoking.
MR. MATTHEWS: Judge, it's not her claim.
THE COURT: I don't think I'll allow it, Mr. Browning. In the first place, she said she saw the health warnings and didn't understand them. And so if she saw them two times a day for 13 years, I mean, you know, the jury can easily do that math.
MR. BROWNING: But she did say that she saw --
THE COURT: They're not on individual cigarettes, okay?
MR. BROWNING: I understand.
THE COURT: So --
MR. BROWNING: Well, I feel like maybe I'm getting in a situation here because of cross and direct. I think she can give awareness in the environment of her father, Judge, and what she knows and communicating with him.
THE COURT: That's why I let you ask the other questions, even over his objection, that I think her awareness is relative, but only to the point that, you know, when and if she discussed it with her father and mother.
You know, if she knew that there were

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definite risks, why didn't she say something to her father, did she feel no compunction to do that. You know, all of that area is open. But, you know, how many cigarettes she smoked, how many times she saw a warning that she says she didn't pay any -- didn't think it was that big a deal.
MR. BROWNING: She never did say that about cigarette packages, Judge. I hadn't asked

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her
about the warnings on the cigarette packages.
THE COURT: Ask her about cigarette packages. I think, you know -- it's easy to do the math. If she smoked one or two packs a day for 13 years, then, you know, she saw a lot of cigarette packages. Whether she read a lot of warnings or not...
MR. MATTHEWS: This is what I knew we were heading -- not exactly this, but you're getting into details of her smoking history which has nothing -- it's not her claim. If it was her personal injury claim, it would be one thing.
THE COURT: You've been pretty clear about objecting any claim. Do you want me to add a claim for her at this point?
MR. BROWNING: I want to define the parameters. I don't want to be back up here in two

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seconds.
THE COURT: What I'm saying is, I don't think the number of cigarettes she smoked is relative, especially since she says -- if you're talking about the warnings and how many times she saw it, you know, you can certainly argue that she had one or two times a day to see the warnings, if it was on there at that time, you know.
MR. BROWNING: Okay.
Q Mrs. Widdick, did you know that on every package of cigarettes that you purchased from the time you started smoking until you stopped smoking, there was a warning on it about the health risks of cigarette smoking?
A I know that now but, at the time when I started smoking, I didn't really think to see any label.
Q And you don't recall ever seeing any label on a cigarette package?
A Later on in the '70s, I saw a label coming out.
Q So in the 13 years you smoked, you never once saw the warning that was on cigarette package?
A In the very beginning at a vulnerable age of 15, 16, no, I did not.

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Q Now, you quit, I believe in 1983; didn't you, Mrs. Widdick?
A Yes, I did.
Q And you quit because you suffered a ministroke; isn't that correct?
A I had several little episodes of ministrokes, yes.
Q And that's a little, short, temporary blackout, isn't it?
A It's considered an onset of a major stroke later on in life, yes.
Q It's not good?
A No, it's not good.
Q And you blacked out one day, and you went to the doctor, didn't you?
A Yes, I did.
Q And that doctor informed you that you needed to quit smoking or that it would be life threatening; isn't that correct?
A He believed smoking had something to do with it, yes.
Q And after that, you quit smoking, didn't you?
A I did not quit cold turkey. I had several hard attempts trying to quit.

Q How many cigarettes did you smoke after he told you to stop?
A I may have snuck one here and there, but I went through hypnosis, I went through every imaginable thing you could possibly do to try to quit.
Q All right. You went through hypnosis?
A Yes, I did.
Q All right. And you smoked one or two cigarettes after the doctor told you to stop. Is there anything else that you did?
A I still had urges. I still smoked here and there.
Q You still had urges, but you quit. And you remain abstinent as of today, don't you?
A Yes.
Q All right. Now did you tell your mother about this episode and that you had been advised to stop smoking?
A Yes, I did.
Q And did you tell your father about this episode and that you had been advised to stop smoking?
A I didn't tell him. I believe my mother

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told him.

Q Okay. But you knew he knew that?
A He knew I was ill.
Q So at that point in time, he had information that there were health risks associated with cigarette smoking, at least insofar as it applied to you; isn't that correct?
A Well, I believe he knew what was wrong with me and why I had the ministroke.
Q And you told -- and he got the message that the doctor said if you continued to smoke, that there would be a life-threatening chance involved; isn't that correct?
A I don't know how much my mother told him.
Q You never told him?
A No, I did not.
Q This happened in when, 1983?
A Uh-huh (affirmative), yes.
Q And in all the years after 1983 until he died, you never told him about the fact that the doctor had told you if you continued smoking, it would be life threatening; is that correct?
A I'm sure I mentioned it to him, but I can't recall exactly when and what time.
Q Would it, in fact, have been within a year after the doctor so advised you?

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A I couldn't tell you.
Q Now, at the time that the doctor advised you to stop smoking, Mrs. Widdick, did you consider that you were addicted?
A I believe I was.
Q Okay. But notwithstanding this addiction, you were able to stop smoking on your own only with one session of hypnosis; isn't that correct?
A I tried to quit several times since the 1970s.
Q I'm talking about after 1983 when you were so advised?
A I still had the urges, and I still had a cigarette here and there.
Q But my point is, Mrs. Widdick --
A Eventually, I did.
Q But my point is you completely quit

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smoking, didn't you?
A Eventually, I did.
Q What you were saying, when you say you were addicted, you mean that you had a habit pattern --
A It wasn't a habit.
Q -- that if you were motivated enough, you had the willpower to choose and you did do so,

didn't you?
A I was faced with the situation of dying. And if you call that motivation...
Q That is motivation, isn't it?
A The fear of death.
Q And you quit smoking, didn't you?
A But I did not quit immediately.
Q How many cigarettes did you smoke after the doctor told you to stop, Mrs. Widdick?
A I may have had one or two here and there, but not a full --
Q Not many?
A Not up to two packs a day.
Q Not many. And you were pretty much clear of it within 60 days after that meeting with the doctor, weren't you?
A I struggled very hard through it.
Q Were you clear of it within 60 days?
A I would think, maybe.
Q Okay. Now, your father -- was there any reason why, when he was struggling to quit, you didn't tell him about the fact that you had had a hypnosis session and it had helped you quit?
A I never -- I don't know if I told him or not. To be honest with you, I don't think I did.

Q You didn't tell him about that?
A At first, I didn't think it would really work. I mean, you're desperate to quit, you try anything.
Q But it did work, didn't it?
A I don't believe it did. It may have contributed --
Q You're not smoking now, are you?
A -- to it, but I don't believe that particular thing helped me to quit, no.
Q But that was part of your becoming abstinent package, wasn't it?
A Like I said, I tried everything I could possibly try.
Q Now, your mother also had to quit

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smoking
because of health reasons, didn't she?
A Yes, she did.
Q And your father was aware of that, wasn't
he?
A Yes, he was.
Q And after she stopped smoking, he didn't
smoke in the car; isn't that correct?
A Like I said, I don't know if he did
afterwards. I know he did before, he would smoke
out -- yes.

Q Did you ever see him smoke in the car with
your mother after she stopped smoking?
A I can't remember.
Q Okay. Now it's your testimony that he
would smoke outside rather than inside and that was
because he didn't want to expose your mother to the
smoke; isn't that correct?
A He had smoked outside way before my mother
ever got sick.
Q Wasn't that because of your grandmother?
A I don't know what the purpose or the
reason was.
Q But your grandmother, I understood from
your mother's testimony, has strong feelings about
smoking in the house?
A She didn't like smoke in the house because
it smelled up the house and dingied up the curtains
and all that.
Q And your grandmother died when?
A She was 80.
Q Do you remember the year that she died?
A It was about 16, 17 years ago.
Q Okay. And after she passed away, your
father continued to smoke outside; isn't that
correct?

A It was just normal for him to smoke
outside.
Q So he continued to do it?
A Yes.
Q Now when you would go visit someone else,
you, your mother and your father, and you're in
someone else's house, would your father smoke in

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the
presence of your mother in someone else's house?
A I'll be very honest with you. I don't remember going in anyone else's house.
Q You never went to Peggy's house?
A To my sister's house, he'd smoke outside.
Q He'd smoke outside there. And it's because of your mother's health?
A No, it was something he did. It was something he normally did.
(Change of reporters, 11:25 a.m.)

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BY MR. BROWNING:
Q And is it your belief that your father didn't know anything about health risks of smoking after your mother was advised to quit by a doctor and did quit?
A I don't believe he did.
Q You don't believe he knew it?
A I don't know.
Q You're sure that your mother told him that, aren't you?
A I don't know what he believed or what he thought or what he knew back then.
Q Okay. How many cigarettes did your father smoke a day?
A Almost two packs a day.
Q Almost two packs a day.
And there's a health warning on every one of those packages that he got his cigarettes out of and smoked?
MR. MATTHEWS: Objection.
THE COURT: I'll sustain the objection. If you want to put a time period on it --
MR. BROWNING: Excuse me. I'm sorry. I'll do it.
BY MR. BROWNING:

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Q From 1966 on there was a health warning on cigarette packages, and there still is health

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warnings on cigarette packages, aren't there?
A Well, I know that now.
Q And you know that, don't you?
A Now, I do.
Q Yes. And your father had been buying two packages of cigarettes every day since 1966; isn't that correct?
A I believe so.
Q And if he buys two packages a day and he smokes both of them, he takes those packages out 40 times a day, doesn't he?
A I believe so.
Q And you multiply that over the period from 1966 until his death in '66 -- in '96, assuming that he continued to smoke until '96, he smoked several hundred thousand cigarettes, didn't he?
A Yes.
Q And he had the opportunity to look at the warning on each package of cigarettes each time he purchased it and each time he took a cigarette out of it and lit it up; isn't that correct?
A I don't know what he read, when he read it, if he read it. And the labels never specified

anything other than maybe "hazardous to your health."
It didn't give an insert in the package. It didn't do any of that. So whether he read it, I don't know.
Q You don't know whether he read it or not?
A I don't know.
Q But you'd have to say he had an awful lot of opportunities to read it, wouldn't you?
MR. MATTHEWS: Judge, I think that's argumentative.
THE COURT: All right. I'll sustain the objection.
BY MR. BROWNING:
Q Was your father an intelligent person, Mrs. Widdick?
A Yes, he was.
Q And did he have any problem seeing?
A No, he did not.
Q Now, in addition to your father smoking over a long period of time with warnings on the cigarette packages, he also sold cigarettes --
MR. MATTHEWS: Objection. Never mind. I'll withdraw it.
MR. BROWNING: Thank you.

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BY MR. BROWNING:
Q He also sold cigarettes at Winn-Dixie as part of his job description, didn't he?
A It was part of his job.
Q Okay. And do you know what his duties were at Winn-Dixie?
A Yes, I do.
Q And he worked at the customer service counter, and he was primarily responsible for selling all of the cigarettes in that store, wasn't he?
A He began working in the back of the store in receiving first, and then he worked in the front end, yes.
Q How long did he work at the front end where he sold cigarettes?
A I know that at the beginning of his working there he was the last -- it was two years in the back, and then he worked up front. And his job duties as a front-end customer service management (sic) was making sure the cashiers were in line, making sure they were on duty. And, yes, he did sell cigarettes, which was part of his job. If he didn't sell them, he wouldn't have a job.
Q True.

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But do you know that he was primarily responsible for selling most of the cigarettes that were sold in that store?
A I don't believe he was primarily responsible, no, not as a customer service manager. I worked at Winn-Dixie, I would know that.
Q Now, but you would -- knowing Winn-Dixie like you do, you would anticipate him handling a lot of cigarette cartons and packages every day on his job, wouldn't you?
A When he was on the front end as a customer service manager, he probably did.
Q Now, Mrs. Widdick, your father had another bad episode in '91, didn't he, 1991? That's when he was diagnosed with emphysema and chronic bronchitis.

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A I believe he did, uh-huh (affirmative).
Q Now, he was diagnosed as having COPD, and
you heard --
A Chronic obstructive pulmonary disease.
Q And you heard Dr. Feingold talk about the
status of his health at that time, didn't you?
A Yes.
Q Now, at that point in time were you aware
of the fact that he had developed emphysema or

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chronic bronchitis?
A I was aware he had chronic bronchitis, but
I didn't get into knowing that he had emphysema. I
knew he had it later on.
Q You knew he had emphysema later on?
A Yeah.
Q You read an article that Dr. Feingold's --
A No.
Q -- opinion was that he had emphysema at
that time? And you knew he had COPD at that time,
didn't you?
A Yes.
Q And did you know that COPD is just a --
some abbreviation for chronic bronchitis and
emphysema?
A Right.
Q Now, at the time you found that out in
1991, that he had COPD, did you think it was smoking
related?
A I put some relation to that.
Q Okay. Now, at that point in time did you
get with your mother and your father and discuss him
quitting now that he had developed COPD?
A He was already basically trying to quit,
so to sit there and beat it into him, we didn't do

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that. We knew he was trying to quit.
Q So you didn't say anything to him?
A We supported the fact that he was trying to quit.
Q Okay. But you didn't say anything to him
about the health risks of smoking at that time?
A We didn't think there was a need to. He

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was trying to quit, obviously.
Q And you also knew, didn't you Mrs. Widdick, that he knew from the literature that was available and from the public broadcast and other public authorities, that there was serious health risks with smoking at that time, didn't you?
A I don't know what he knew.
Q You didn't know he knew that?
A What period of time are we talking about?
Q I'm talking about at the time that he developed COPD.
A We found out in the last couple of years that he was alive when it was really broadcasted out in the newspapers of all of the problems that was going on.
Q But my question to you is this: You didn't tell your father because you assumed he knew;

isn't that correct?
A I didn't assume anything. I don't know. I know he was trying to quit smoking.
Q Well, you certainly wanted him to quit, didn't you?
A We were all supporting his trying to quit.
Q And you certainly wanted to encourage him, didn't you?
A We all did whatever we could to help him try to quit.
Q Would it be fair to say that until your father was diagnosed with lung cancer in 1996, that you never had the discussion with him where you urged him to quit smoking?
A I never sat down and talked to him about it.
Q Well, how about at any time, standing up, on the telephone, or anything?
A He was trying to quit. Obviously, he was doing his best trying to quit anyway. We -- we -- he's a grown man and, you know, he was trying to quit. Why should we make it any harder on him? I mean, I'm sure he knew something or he felt that it wasn't good for him and he tried to quit.
Q Well, my point is, you didn't urge him to

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quit and tell him about your hypnotist?
A Why should I urge him to quit when he's already trying to quit?
Q Well, I'll leave it there.
When did you first form the opinion that cigarette smoking was related to lung cancer, Mrs. Widdick?
MR. MATTHEWS: Judge, again, I object to relevancy. When did she form the opinion?
THE COURT: I'll sustain the objection.
MR. BROWNING: I was going to follow that with another question. But I'll withdraw it.
BY MR. BROWNING:
Q You were -- you became aware that cigarette smoking was related to lung cancer sometime in the '80s, didn't you, Mrs. Widdick?
A I read labels. But stuff that you see in the magazines on the bottom you would see the little warnings, but I never really associated it until my dad was diagnosed.
Q You were not aware of that?
MR. MATTHEWS: Judge, I object to the form. I think that mischaracterizes --
BY MR. BROWNING:
Q In 1983 or in the '80s you did not know

that lung cancer had been related to cigarette smoking?
A I never connected it.
Q Okay. Mrs. Widdick, do you remember giving your deposition here again at -- this was on March the 10th here in Jacksonville?
A Yes.
Q And do you recall being asked the following questions to which you gave of the following answers:
MR. BROWNING: Page 515, Floyd.
Are you ready?
Q "You understood, did you not, Mrs. Widdick, that smoking posed a risk of lung cancer prior to the time you actually quit smoking?"
Answer: "No."
"So you didn't understand that cigarette smoking posed a risk of lung cancer until after you had quit smoking?"
Answer: "Yes."
A That's correct. That's what I saw on the labels. I just mentioned that a little while ago.
Q So those labels came out in 1984, didn't

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they?
A Right, later on the '80s. That's right.

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I was absolutely right on that answer. It was on the labels.
Q Right. Now, did you ever mention the fact that cigarette smoking was related to lung cancer to your father?
A No.
Q You didn't tell him that?
A Not until he was diagnosed.
Q And the reason you didn't tell him is because you assumed he already knew from the public literature and the notices on the packages; isn't that correct?
A I don't know what he knew. I can't assume it. I don't know.
Q Well, there must have been some reason that you didn't tell your father that you had discovered that cigarette smoking was related to lung cancer.
A I probably thought he saw the labels later on in the '80s or '90s. I don't know. I just -- I don't know. I couldn't answer that.
Q But that's the reason why you didn't tell him; isn't that correct?
A Again, I can't really -- I don't know.
Q You just don't know why you didn't tell

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him?
A The conversations like that never came up.
Q I believe it's your testimony that you never saw your father smoke any other brand of cigarettes other than Lucky Strikes; is that correct?
A That's correct.
Q Okay. Were you around him much from 1985 on, Mrs. Widdick?
A Yes, I was. I went to visit often, fairly often. I would see him a lot, uh-huh (affirmative).
Q And would you notice the brand of cigarettes that he would be smoking from time to

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time?
A Yeah, I noticed.
Q It was always Lucky Strike?
A Yes.
Q Do you know that the coemployees there at Winn-Dixie all have stated that he smoked Marlboro Lights?
MR. MATTHEWS: I object. That's an improper question.
THE COURT: I'll sustain it, the objection.
MR. BROWNING: I'll rephrase it.

BY MR. BROWNING:
Q Mrs. Widdick, do you have any idea of the type of cigarettes that Mr. Maddox was smoking from 1985 to 1994 when he was working at Winn-Dixie?
A Every time I saw my father, he smoked Lucky Strikes.
Q I'm talking about when he was on the job at Winn-Dixie, do you know what he smoked?
A I don't know. I would assume Lucky Strikes.
Q Did you ever visit him during that period of time?
A One time.
Q One time?
A One time.
Q And I doubt you can remember whether you were smoking at that time?
A No, huh-uh.
Q Okay. Are you aware that Marlboro Lights is made by a company other than American Tobacco Company?
A I guess they are. I don't know.
Q Okay. I believe you've stated that you never heard your father use the terms cancer sticks, coffin nails; is that correct?

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A He's never used those terms around me in the 42, 43 years that I've been with him.
Q You've heard those terms before?
A I've heard cancer stick. But coffin nails, the first time I ever heard that was when I got involved with the litigation.
Q In this courtroom, okay.
Now, have you ever heard any other

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person
use those terms in your father's presence when you were present?
A When I was present?
Q Right.
A No.
Q Specifically, let me ask you if you know Mr. Gene Gladstone?
A Yeah, he's my ex-brother-in-law.
Q All right. And he lived there close to your parents for a period of time back in the '70s, didn't he?
A Somewhere around there, uh-huh (affirmative).
Q About how many years did he live there?
A Not very long. He was -- they were always moving around.
Q Well, was he in the general vicinity of

your parents home for, what, a year, two years, three years?
A They lived a few miles away from me a couple years.
Q A couple years.
And were they pretty close, your father and Mr. Gladstone?
A The only time my father was close to him was when -- well, I can't really consider close. Gene would come to the house when he needed something, needed a tool or needed money. He was a very dominating person, and he was taller than my father. My father was kind of squirmish every time he would come over, and just did whatever Gene wanted. He was that kind of a person.
Q Did they work on cars together?
A Not that I know of.
Q Okay. Did they go to auctions together?
A They never went out together.
Q They never went to malls together?
A No, they did not.
Q Now, did you ever hear Mr. Gladstone use the terms cancer sticks or coffin nails in the presence of your father?
A I don't know if he's used them in the

presence of my father. Maybe he has.
Q Well, I mean, if you were there and heard it.

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A No, I've never heard it.
Q You've never heard it?
A No.
Q Have you ever heard your father refer to a filter tip on a filtered cigarette as a muffler?
A No.
Q Have you ever heard the term Stanley and Oliver?
A I believe that's what they were calling each another for a time.
Q All right. Your father was calling Mr. Gladstone Stanley, or just how was it?
A I don't know. I don't know how that came.
Q And you took that as sort of terms of affection from Laurel and Hardy, didn't you?
A I didn't take it as anything. I don't know. I wasn't around that much to know that they said that to each other. Gene came over very seldom. The only time he came over is when he needed something.
Q Mrs. Widdick, you obviously were around enough to hear them refer to each other by those

names?
A Oh, yeah, when he came in the front door.
Q And these were terms in endearment, so to speak, weren't they?
A I couldn't tell you that. There wasn't that much affection between my father and him.
Q Did your father reciprocate by calling him either Stanley or Oliver?
A One or the other.
Q You don't know which one it was?
A (Witness moves head side to side.)
Q But it's your testimony that Mr. Gladstone moved around quite a bit?
A Yes, they did.
Q And I believe he moved up to Kentucky after he left Florida; isn't that correct?
A Yes, he did.
Q And didn't your parents go live with Mr. Gladstone and Peggy for a while?
A They didn't live with them. They got a house down the street from them.
Q Well, didn't they stay with them a few days until they --
A I don't know.
Q -- or a month to where they could purchase

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a home?
A I stayed in Florida. I don't remember.
Q You stayed in Florida?
A Uh-huh (affirmative).
Q How long did your parents stay there in Kentucky close to Peggy and Mr. Gladstone?
A Not very long.
Q How long?
A I think my mom was up there longer, and my dad came back.
Q There's been a lot said in the courtroom, Mrs. Widdick, about a Frank Statement to cigarette smokers. You've heard that, haven't you?
A Since I've been here, yes.
Q All right. You had never heard of it before this action was filed, had you?
A Never.
Q Now, do you know when this was published?
A No, I don't.
Q Assuming it was in 1954, how old would you have been then to put this thing in perspective?
A In '54 I was born.
Q Before you were born?
A I was born in '54.
Q Right.

And your father would have been 24 years of age at that time, wouldn't he?
A Yes.
Q And as far as you know, he never read a sentence or a paragraph of a Frank Statement to cigarette smokers, did he?
A I don't believe he did.
Q You don't believe he did?
A (Witness moves head side to side.)
Q As far as you know, he didn't?
A I don't believe he did. I don't know.
Q Now, did your father ever mention an organization called TIRC?
A No.
Q You've heard it here in the courtroom, haven't you?
A Here in the courtroom.
Q And it's all been associated with matters and things that took place back basically in the '50s; isn't that correct?
A I believe so.
Q And as far as you know, your father never read one thing that TIRC put out stating the

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tobacco
industry's position on cigarette smoking and health
risks; isn't that correct?

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A I don't know what he read.
Q As far as you know he didn't read that one, did he?
A I don't believe he read anything. I don't know.
Q Do you know whether or not he read anything put out by an organization called CTR?
A I don't believe so.
Q As far as you know, he did not; isn't that correct?
A No.
Q Now, there's been talk here about a publication that was sent to over 200,000 physicians in America stating the position of the tobacco industry on the health risks of smoking. You've heard that, haven't you?
A In this courtroom, yes.
Q And as far as you know not a doctor that treated Mr. Maddox ever received a document described like that?
A I don't know what they received.
Q But as far as you know --
A I don't know.
Q Okay. Now, do you know the name of any doctor that treated Mr. Maddox before 1994?

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A There was a Dr. Cohen, a Dr. Drake. I don't know of anyone else.
Q And so you have absolutely no knowledge of what they might have received from any firm or person connected with the tobacco industry; is that correct?
A I have no idea.
Q Okay. As far as you know, did he ever read an article on the position of the tobacco industry in "True Magazine"?
A I don't believe my dad really read magazines. I never seen him.
Q As far as you know, did your father ever read an advertisement by R. J. Reynolds entitled, "Can We Have An Open Debate About Smoking"?
A My dad wasn't a reader. He wasn't -- he didn't --

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Q So as far as you know, he didn't read that?
A I don't believe he did.
Q Okay. As far as you know, did he ever read the 1985 publication titled, "Of Cigarettes and Science," by R. J. Reynolds Tobacco Company. It was --
A I don't know.

Q -- produced by them and published.
Do you know if your father had ever heard of Clarence Cook Little?
A I don't believe he did.
Q And as far as you know, he never read or took a publication called "Tobacco and Health," did he?
A No, I don't believe he did.
Q And he didn't ever take or read a publication known as "Tobacco and Health Research," did he?
A I don't believe he did.
Q Now, Mrs. Widdick, do you know where I got those names of those articles from?
A No.
Q Do you know that a complaint had been filed on your behalf in this case --
MR. MATTHEWS: Judge, I object to this.
THE COURT: Okay. I'll sustain the objection. She says she didn't know, and I'm not going to let you testify as to where you got it, Mr. Browning.
MR. BROWNING: All right. I'll stop.
BY MR. BROWNING:
Q Can you think of any publication that your

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father ever read that was published by the tobacco industry that stated the tobacco industry's position on smoking and health before 1996?
A I believe all my father ever saw was advertisements. I don't know what he saw or read.
Q Well, I'm saying as far as you know.
A As far as I know.
Q Okay.
MR. BROWNING: Your Honor, could I have just a couple of minutes to check with co-counsel? I'm about through.

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THE COURT: That would be fine. Take your time.

MR. BROWNING: Well, this won't be a question, but it will probably be a pleasing remark. No further questions.

THE COURT: All right.

Mr. Matthews, anything further?

MR. MATTHEWS: Just a couple, Your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. MATTHEWS:

Q Mrs. Widdick, just a couple of questions.

You were asked some questions by Mr. Browning about whether you had seen your father smoking cigarettes

at Winn-Dixie between '85 and, I think, '94. Do you recall those questions?

A Right.

Q And you had only been there one time?

A Right.

Q All right. Did there come a time when your dad, right after he worked for Winn-Dixie, that he went to work for Wal-Mart?

A Yes, he did.

Q And what did he do at Wal-Mart?

A He worked as a cashier for a while, and he worked in the service desk.

Q And that was just before his diagnosis -- a year or so before his diagnosis with cancer?

A Yes.

Q Did you have occasion to visit him at Wal-Mart?

A My children and I would go visit, and we would see him sitting out front.

Q Was he smoking a cigarette when you went out there?

A Yes, he was.

Q Do you know what kind of cigarettes he was smoking?

A They were unfiltered cigarettes.

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Q But you don't know the brand?

A I would think they were Lucky Strikes.

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That's all he ever smoked.
MR. BROWNING: Objection.
THE COURT: All right.
BY MR. MATTHEWS:
Q Don't tell us what you think. Do you know what the brand was?
A No.
Q But they were unfiltered, you know that?
A Yes. Yes.
Q You were asked a bunch of questions about 1991 when your dad was diagnosed with COPD?
A Right.
Q To your knowledge he was not diagnosed with emphysema, just COPD?
A See, that's -- I didn't know what COPD meant at that time. I do know -- I know what it means now.
Q Right. But at the time that was the diagnosis, not emphysema?
A Right.
Q You were also asked some questions about your dad's smoking -- attempts to stop smoking, and I think Mr. Browning asked you a question about --

or maybe you said you didn't dry to beat it out of him -- do you recall that -- or beat it into him, I think is what you said?
A Right. Right.
Q Do you regret not beating it into him now?
A I do.
Q Your question -- the questions that were asked of you about your attempts to stop smoking, as I understand it you had had this -- you called it a mini-stroke?
A Yes.
Q And that led to the doctor telling you you should stop smoking?
A I was heading for a major stroke.
Q And even knowing that, even after hearing all of that from the doctor, you continued to smoke at least partially, didn't you?
A Yes, I did.
Q As you attempted to stop?
A Yes.
MR. MATTHEWS: Thank you, ma'am.
THE COURT: All right.
MR. BROWNING: May we have just a moment,

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and I'll have one question?
THE COURT: All right.

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RECROSS-EXAMINATION

BY MR. BROWNING:

Q Let me ask it this way: Mrs. Widdick, you keep saying you smoked after the doctor told you that, that you had had a mini stroke and it was life threatening to continue to smoke. Did you smoke four, five, six, or seven cigarettes? How many was it?

A I can't remember.

Q You can't remember the number of cigarettes?

A No. I'd smoke part of one, and then I would ditch it, and then I would smoke another. I don't know.

Q Okay. Now, you said that after you found out your father had COPD you didn't want to beat it into him?

A Uh-huh (affirmative).

Q You didn't suggest to him that he seek professional care at that time, did you?

A No.

Q Would you consider that beating it into him?

A I don't know what you're trying to say.

Q Well, you stated that you didn't want to

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beat it into him about his smoking. I want to know would you consider telling him that he needed to seek professional care to get help to quit as being a beating it into him?

A I just believe he was trying to quit. I mean, how much more can you do? He was making every attempt to quit on his own.

Q And you thought he could quit because you had been able to quit yourself when you became motivated to quit; isn't that correct?

A I don't think that. Everybody's different. You're comparing me with apples and oranges with my father, but you can't do that.

Q But you knew you could quit because you were well motivated, didn't you?

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A I quit. I was looking at death.
Q And you also felt like your father could quit if he had the right motivation; isn't that correct?
A I can't answer that. I don't know.
MR. BROWNING: Thank you.
THE COURT: Mr. Matthews?
MR. MATTHEWS: Nothing further, Your Honor.
THE COURT: All right. Mrs. Widdick, have

a seat.
Counsel approach the side bar a minute.
(Side bar conference, Court and Counsel)
(Side bar conference concluded; proceedings resumed before the jury)
THE COURT: Ladies and gentlemen, it's as I told you, we're going to break for the weekend at this point, and I'm going to go back and do a little work with the attorneys. But as far as the jury is concerned, we will be in recess until nine o'clock Monday morning.
Please do not discuss the case among yourselves, nor with anyone else. I know you've gotten more and more testimony and information, but there's still a lot of the trial left to go. So please try to avoid any TV or radio or newspaper accounts of this trial or anything to do with the tobacco industry at this point.
Okay. The jury is excused until nine o'clock Monday morning. I'll see the attorneys in chambers in about five minutes, okay.
(Change of reporter, 12:00 p.m.)

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(The following proceedings were held in chambers; present for this hearing are Mr. Matthews, Mr. Riley, Mr. Browning and Mr. Maxwell.)
THE COURT: We're here on the question of whether or not you can -- you have a subrogation letter from Blue Cross Blue Shield stating that there's a lien of 55-, what is it?
MR. MATTHEWS: $52,229.42.

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THE COURT: And the defense has raised an objection to that. And I think -- and let me just put this on the record. I think that there are two questions.

One, they've raised the objection whether it is a lien against the estate and, two, if so then how we're going to handle it.

MR. MATTHEWS: I'm not sure whether it's a lien against the estate. We don't have the probate file. But I don't think that's what is controlling, Judge, because under 768.76, that's under the section that's entitled damages.

And it's clearly applicable to the wrongful death claim which we -- which we've brought. It says that, you know, it goes through the whole thing. And I won't read the whole statute, but it says any action to which this part

applies, and clearly this action applies.

In which liability is admitted or determined by the trier of fact and in which damages are awarded, the Court shall reduce the amount of such award by the total amount of all amounts which have been paid for the benefit of the claimant or which are otherwise available to the claimant.

THE COURT: Mr. Matthews, let me say for the record, they would have to show me, number one -- if it's a claim against his estate, it would be a claim against Mr. Maddox, okay.

Now, I don't know whether this -- apparently, Blue Cross Blue Shield, they paid it on behalf of somebody. And if they paid it and have no claim against Mr. Maddox, only when and if his estate collects from someone else or there is a judgment against someone else for that amount to cover at least the amount of the thing, then it's my understanding that they can't raise it against the estate, because it is not a debt owed by Mr. Maddox until and unless there is a judgment against the third entity of some kind.

Now, that's my understanding of the law, Mr. Browning. You can educate me, if it's incorrect.

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MR. BROWNING: I think I agree with you, Judge.

THE COURT: All right.

MR. BROWNING: I probably would have enunciated it a different way. But the law for that statute is very specific on the damages that are allowable to be recovered against the party, in this case my client. There's got to be a legitimate claim in there for the medical expenses to the estate.

For instance, if they had a claim and they haven't filed it properly, the nonclaims statute would abolish it.

MR. MATTHEWS: Judge, we are talking apples and oranges. This is a subrogation claim that Blue Cross has, and it's clearly set forth in the collateral sources of the indemnity of the statute.

It says in paragraph four all they've got to do is comply with this statute, a provider of health care services, and they've complied. We got the letter.

THE COURT: We have gotten down to the bottom line. Are you saying I should not allow them to argue the medical expenses?

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MR. BROWNING: They can, if they can show a charge against the estate, Your Honor, meaning they filed a claim.

THE COURT: It's going to be charged against the estate, if they recover.

MR. BROWNING: It can't be because they have -- because this is the wrongful death statute, which sets forth the damages totally.

And once you get within the ambient of the damages allowed here, then you can come in with that particular charge and get it. But this determines what the judgment is.

And you have to have some kind of claim that's presented in the estate file to qualify under the wrongful death statute. That's an element of damages.

MR. MATTHEWS: I understand what he's

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saying. And because this is what applies, this is the law, any other claim or lien against the estate that might be correct, but this is a separate -- and either he doesn't understand that or they choose to ignore it. But it clearly sets out what the health care provider has to do and they've done that.

THE COURT: Let me say this. Unless I'm misunderstanding your argument, if you are arguing

that they have no right to even ask for medical expenses because they've waived it in some way, then I would consider your argument and perhaps the case law on it.

But there isn't any doubt in my mind if they have the right to argue medical expenses and it was paid by Blue Cross Blue Shield or whoever --

MR. BROWNING: Absolutely, Judge.

THE COURT: -- then it would constitute a lien on the judgment. And the jury -- well, there's procedure in doing it. I mean, we have used something different from the statute in the past.

But the jury needs to know that, that if they award that 52,000 that it will not go to -- it will go to third parties, because that's Florida law.

MR. MATTHEWS: Right.

MR. BROWNING: Here is what I was saying, Judge, he hasn't laid a proper predicate to claim that because the wrongful death statute says if there is a charge against his estate then you can get medical expenses that are a charge against his estate.

THE COURT: No, we are not talking about --

MR. BROWNING: I understand, but I don't -- see, the wrongful death statute says, enumerates and itemizes the damages that we can -- that they can get. That's all I'm saying. And we offered it

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to them. We said, Hey, just show us.
THE COURT: You don't think the statute supersedes that?
MR. BROWNING: Why would that statute supersede that one unless it says to? I think the specific overrules the judgment, Your Honor.
THE COURT: And that's specific?
MR. MATTHEWS: Right.
MR. BROWNING: This is specific.
THE COURT: No, that's the general statute on damages and wrongful death.
MR. MATTHEWS: This is health care providers. And this is what this is. This is an entity.
MR. BROWNING: I'm sorry, excuse me.
MR. MAXWELL: That's okay. This came up in the Connor case last year, although there wasn't an objection. But there existed a lien just like this.
And the way we proved it up was that the personal representative testified, she was asked

have there been any liens filed in this case. She said yes. What is the amount of the lien and who is the lienholder. Then she identified that.
And then we asked her what is your understanding with respect to payment of the lien if there's recovery in this case. She said, Well, It's my understanding if there is recovery in this case the lien must be paid.
And that's how we proved it up. And I think that's normally how we would do it in this case as well. Otherwise, otherwise if there is a recovery, without any evidence of that, if there's a recovery to the estate or even to the survivor, the lienholder still comes in and they get the full amount of the lien.
MR. MATTHEWS: Because it sets forth in here how the -- actually, it's a subrogation claim, but how this claim is to be perfected, by mail to the -- or notice. And that's what they've done.
So we can't destroy their -- as I said, I think Mr. Browning would be correct if it were -- if it were a debt that was owed to the estate or something else that he was entitled to claim.
But that's -- this is a totally different and separate issue and is specifically set forth in

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here.

MR. BROWNING: But what he is mixing up is procedure for a health care provider to come in and provide an element of damages in this case. The element of damages is dependent upon his client, not the health care provider.

What goes in the pot in a wrongful death is set forth specifically in the statute. It has very, very specific --

THE COURT: And medical expenses don't go in that pot?

MR. BROWNING: Yes, sir, but that are a charge against the estate.

THE COURT: Okay.

MR. BROWNING: That's the only thing I'm saying.

THE COURT: Right. That's why we're talking about -- and then the legislature specifically said that if that estate recovers for medical bills that they didn't -- that were not paid by Mr. Maddox or his estate, then, and only then, are health insurance companies allowed to claim those proceeds. I mean, that's a particular statute to do that.

So, you know, when I say specifically,

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legislature specifically addressed that issue and determined that that -- that they should be allowed to do that, that we're not going to allow, in wrongful death cases or in personal injury cases, the plaintiff to get a windfall, if you will.

In fact, unfortunately, I was kind of partially involved in this. We used to come over here, as you are aware, Mr. Browning, and get the judge to issue an order saying that 10 percent of the lien would be paid, or 5 percent.

MR. BROWNING: Yes, I remember.

THE COURT: And then the hospital lobby got a hold of that and determined that that probably wasn't fair. So the legislature passed this statute.

And now it's real difficult to even compromise the liens if a judgment is -- now, it's easy to compromise the liens prior to judgment, as you're all aware.

But I would allow them to present that

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testimony because I think Florida law allows it. Now, if they don't ask her and you want to ask her, "But if you don't recover anything, then you don't owe that money," then that -- I mean, I think the jury -- it needs to be clear to the jury that it's

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only payable to the insurance company if there is a recovery.

MR. NYHAN: Why don't we work out a stipulation for that?

THE COURT: Well, I mean, that's what I was going to suggest. But what I'm saying is unless you can show me some case law that pretty specifically says they can't do that, then I think Florida law is clear that they have a right to do it.

Now, what we have done in the past -- I can't make them do this, but this is -- it's worked before and y'all might discuss this. Mr. Mathews, I know, and Mr. Maxwell are well aware of it.

MR. MATTHEWS: Uh-huh (affirmative).

THE COURT: Is maybe just make an announcement that there -- that if the medical -- if there is a recovery, the medicals will have to be reimbursed to the medical insurance company in the amount of such and such.

MR. NYHAN: I think we can work something out along that line.

MR. MATTHEWS: Yes.

THE COURT: As opposed to bringing somebody back up on the stand to do that.

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MR. BROWNING: Why don't we just stipulate that if they get a recovery, like you said, throw it in and leave the jury out of it.

MR. MAXWELL: The jury has to know it's a separate item of damages.

THE COURT: I think under the statute they have a right -- and you can read it -- but they have a right to let the jury know.

The jury can't speculate back there on whether or not they had insurance. In fact, it

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may even be in the medical records, all through the medical records that Blue Cross Blue Shield paid money.

MR. MATTHEWS: I think the easiest way, Judge, we can work out a stipulation so we don't have to put a witness back up on the stand that says basically here's the amount, that only in the event there is a recovery for that amount then, in that case, or something to that effect, it will be paid.

MR. MAXWELL: There will be a line on the verdict form for it.

MR. MATTHEWS: Right.

MR. NYHAN: I don't know that we need to put a line on the verdict form.

THE COURT: We can argue that. But we're

talking about what to tell the jury before you close.

MR. NYHAN: Yes. I don't agree that we need a line on the verdict form for that.

MR. MATTHEWS: We will argue that later. I think they're wrong, but we will argue that later, because I'm not willing to waive it.

MR. MAXWELL: We can address that, Judge.

THE COURT: I'm going to worry about the verdict form after you put it all in.

MR. BROWNING: We can stipulate to add it to the judgment is what I was suggesting.

MR. MAXWELL: Oh, well, okay.

MR. BROWNING: Then the jury doesn't have to speculate. That's what we need to do. But we still object, but we will stipulate to that. But I'd waive our objection.

THE COURT: In the past, as I've said, you know, we tell the jury that in some form or another and then y'all have agreed -- and I can't make you do this. I'm not saying that I'm trying to make you do this.

But y'all have agreed that to keep from complicating the thing with the jury that I would reduce any verdict by that amount if they, indeed,

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give you a verdict for that amount.

MR. MATTHEWS: Right, okay. Thank you, Judge.

THE COURT: Yes.

(The above proceedings were adjourned at 12:15 p.m.)

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